DOCUMENT RESUME

ED 188 827 RC 012 097

TITLE Waiver of Indian Claims Commission Act Statute of Limitations for Cow Creek Band of Umpqua Indians. Joint Hearing before the Select Committee on Indian Affairs, United States Senate and the Committee on Interior and Insular Affairs, House of Representatives, 96th Congress, First Session on S. 688 and H.R. 2822.

INSTITUTION Congress of the U.S., Washington, D.C. House Committee on Interior and Insular Affairs.; Congress of the U.S., Washington, D.C. Senate Select Committee on Indian Affairs.

PUB DATE 14 Jun 79

NOTE 48p.; Not available in paper copy due to small print size.

EDRS PRICE MF01 Plus Postage. PC Not Available from EDRS.

DESCRIPTORS Agency Role; Aggression; American Indians; Compliance (Legal); Cultural Traits; *Federal Indian Relationship; Government Role; *Hearings; *Land Settlement; Land Use; Local History; *Nonreservation American Indians; *North American History; Oral History; Relocation; *Treaties; Trust Responsibility (Government)

IDENTIFIERS Oregon; Termination of Special Tribal Status; *Umpqua (Tribe) (Cow Creek Band)

ABSTRACT

On June 14, 1979, an open joint hearing before the Senate Select Committee on Indian Affairs and the House Committee on Interior and Insular Affairs received testimony from the administration, members of the Cow Creek Band of Umpqua Indians, and other interested parties on S. 688 and H.R. 2882. These bills would waive the statute of limitations in the Indian Claims Commission Act and permit the Cow Creek Band of Umpqua Indians to file suit in the U.S. Court of Claims for alleged failure of the Government to uphold treaty obligations agreed to in a treaty entered into by the tribe and the U.S. Government in 1853. Representatives of the Cow Creek Band claim their failure to comply with the deadline is due to the fact that they were not afforded notice or assistance by the Government of their potential claims as mandated in the Indian Claims Commission Act. Assistant Secretary of the Interior for Indian Affairs, Forest Gerard, gave a brief history of the Indian Claims Commission Act and its effect on the Cow Creek Band of Umpqua Indians in settling their homeland. Members of the Cow Creek Band testified to the ordeal their people have been through to make claim to land which they have lived on for generations; the discouragement they encountered when the Bureau of Indian Affairs did not recognize them as a tribe or reservation; the struggle they have experienced in obtaining education, housing, jobs, and medical services because they were ineligible for assistance available only to federally recognized tribes; and their greivances against the Government regarding the fulfillment of treaty responsibilities. An extension to submitting a tribal land claim was repeatedly requested. (EB)

ED188827

WAIVER OF INDIAN CLAIMS COMMISSION ACT STATUTE OF LIMITATIONS FOR COW CREEK BAND OF UMPQUA INDIANS

JOINT HEARING

BEFORE THE

SELECT COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

AND THE

COMMITTEE ON INTERIOR AND INSULAR AFFAIRS
HOUSE OF REPRESENTATIVES

NINETY-SIXTH CONGRESS

FIRST SESSION

ON

S. 668 and H.R. 2822

TO PERMIT THE COW CREEK BAND OF UMPQUA INDIANS TO FILE WITH THE U.S. COURT OF CLAIMS ANY CLAIM SUCH BAND COULD HAVE FILED WITH THE INDIAN CLAIMS COMMISSION UNDER THE ACT OF AUGUST 13, 1946

JUNE 14, 1979

WASHINGTON, D.C.

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U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON : 1979

49-148

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S. 668 AND H.R. 2822—BILLS TO PERMIT THE COW CREEK BAND OF THE UMPQUA TRIBE OF INDIANS TO FILE WITH THE U.S. COURT OF CLAIMS ANY CLAIM SUCH BAND COULD HAVE FILED WITH THE INDIAN CLAIMS COMMISSION UNDER THE ACT OF AUGUST 13, 1946

THURSDAY, JUNE 14, 1979

U.S. SENATE,
SELECT COMMITTEE ON INDIAN AFFAIRS,
HOUSE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS,
Washington, D.C.

The committees met, pursuant to notice, at 10 a.m. in room 6226, Dirksen Senate Office Building, Senator John Melcher (chairman of the Select Committee on Indian Affairs) presiding.

Present: Senator Hatfield.

Also present: Representative James Weaver.

Staff present: Alan Parker, chief counsel; Michael Cox, minority counsel; and Susan Long, Gunilla Foster, and Brooks Yeager, legislative aides.

Senator MELCHER. The committees will come to order.

This is an open joint hearing before the Senate Select Committee on Indian Affairs and the House Committee on Interior and Insular Affairs to receive testimony from the administration, members of the Cow Creek Band of Umpqua Indians, and other interested parties on S. 688 and H.R. 2882. These bills would waive the statute of limitations in the Indian Claims Commission Act and permit the Cow Creek Band of Umpqua Indians to file suit in the U.S. Court of Claims for alleged failure of the Government to uphold treaty obligations agreed to in a treaty entered into by the tribe and the U.S. Government in 1853.

The Cow Creek Band failed to comply with section 12 of the Indian Claims Commission Act, which was established August 13, 1951, as the deadline for the filing of claims. Representatives of the band have claimed that their failure to meet this deadline is due to the fact that they were not afforded notice nor assistance by the Government of their potential claims as mandated in the Indian Claims Commission Act. These bills would permit the Cow Creek Band of Umpqua Indians to litigate its claim before the U.S. Court of Claims without regard to the deadline and allow them their "day in court."

At this point, without objection, I shall order a copy of each of the bills be made a part of the hearing record.

[Materials follow:]

[S. 668, 96th Congress, 1st session]

A BILL To permit the Cow Creek Band of the Umpqua Tribe of Indians to file with the United States Court of Claims any claim such band could have filed with the Indians Claims Commission under the Act of August 13, 1946 (60 Stat. 1049)

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That notwithstanding the time limitations of sections 2401 and 2501 of title 28, United States Code, and of section 12 of the Act entitled "An Act to create an Indian Claims Commission to provide for the powers, duties, and functions thereof, and for other purposes", approved August 13, 1946 (25 U.S.C. 70k), hereinafter in this Act referred to as the "Act of August 13, 1946", the United States Court of Claims shall have jurisdiction to consider any claim filed by the Cow Creek Band of the Umpqua Tribe of Indians within five years after the date of the enactment of this Act respecting any matter for which a claim could have been filed by such band with the Indian Claims Commission under section 2 of the Act of August 13, 1946 (25 U.S.C. 70a).

SEC. 2. In determining the amount to be awarded in any action under this Act, the Court of Claims shall make appropriate deductions for all offsets, counterclaims, and demands that would be permitted to be made by the Indian Claims Commission under the third paragraph of section 2 of the Act of August 13, 1946 (25 U.S.C. 70a), if the claim were to be determined by such Commission, except that the United States may not receive credit for any funds expended under the Act of June 18, 1934 (48 Stat. 984; 25 U.S.C. 461 et seq.).

SEC. 3. The Court of Claims may award to any prevailing party, other than the United States, in any action under this Act costs of suit and reasonable attorneys' fees not exceeding 10 per centum of the amount recovered by such party in the action.

SEC. 4. (a) For purposes of this Act, the term "Cow Creek Band of the Umpqua Tribe of Indians" means the group of persons descended from persons considered members of such band for purposes of the treaty entered into between such band and the United States on September 19, 1853 (10 Stat. 1027), as ratified by the Senate on April 12, 1854, except that such group shall not include any persons, or the descendent of any person, who shared in the distribution of funds under the Act entitled "An Act to provide for the termination of Federal supervision over the property of the Klamath Tribe of Indians located in the State of Oregon and the individual members thereof, and for other purposes", approved August 13, 1954 (25 U.S.C. 564 et seq.), or under the Act entitled "An Act to provide for the termination of Federal supervision over the property of certain tribes and bands of Indians located in western Oregon and the individual members thereof, and for other purposes", approved August 13, 1954 (25 U.S.C. 691 et seq.).

(b) In any proceeding under this Act, the Council of the Cow Creek Band of the Umpqua Tribe of Indians, a nonprofit corporation incorporated in the State of Oregon, shall be considered to be the governing body of such band.

SEC. 5. The provisions of the Act of November 4, 1963 (77 Stat. 301), shall be applicable with respect to any claim filed by the Cow Creek Band of the Umpqua Tribe of Indians with the Court of Claims pursuant to this Act in the same manner and to the same extent as if such claim were pending before the Indian Claims Commission.

[H.R. 2822, 96th Congress, 1st session]

A BILL To permit the Cow Creek Band of the Umpqua Tribe of Indians to file with the United States Court of Claims any claim such band could have filed with the Indian Claims Commission under the Act of August 13, 1946 (60 Stat. 1049)

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SECTION-BY-SECTION ANALYSIS OF H.R. 2822

SECTION ONE

Section 1 gives the United States Court of Claims jurisdiction to consider any claim filed by the Cow Creek Band of Umpqua Tribe of Indians within five years of enactment of this Act provided that the claim is for a matter which could have been filed under the Act of August 13, 1946, creating the Indian Claims Commission.

SECTION TWO

Section 2 directs the Court of Claims to make deductions from any award for any offsets which would have been deducted under the Indian Claims Commission Act, except that the United States will not be given credit for any funds expended under the Act of June 18, 1934.

SECTION THREE

Section 3 provides for the awarding of reasonable attorneys' fees and costs of the suit to any prevailing party to a limit of 10 percent of the total award.

SECTION FOUR

Section 4(a) defines the membership to the Cow Creek Band of the Umpqua Tribe of Indians for purposes of this Act as those persons descended from members of the band at the time of the September 19, 1853 Treaty, provided that persons who shared under the Klamath or Western Oregon Termination Acts of August 13, 1954, not be included, and

(b) provides that the Council of the Band shall be considered the governing body of such band in any proceeding under this Act.

SECTION FIVE

Section 5 states that the provisions of the Act of November 4, 1963, with respect to expert assistance shall be applicable to any claim filed under this Act.

Senator MELCHER. Now, I would defer to my colleague in the House, my friend of many years, Congressman Jim Weaver.

Mr. WEAVER. Thank you. I really appreciate that. It has been a great privilege to serve in the House as well as now, with you, in the Senate, John.

I would like to greet the witnesses who are here today to support the right of the Cow Creek Band to make such claims upon the Government of the United States as they deem necessary to redress their longstanding grievances. These people, both members of the band and the friends who will be supporting their testimony with historical and legal evidence, have come a very long way to lay their case before the U.S. Congress.

This is the culmination of an effort stretching over many years to establish the identity and legal standing of the Cow Creek Band.

Without prejudging the validity of the claim which the Cow Creeks wish the bring before the courts, I will say that it appears to me that their right to present such claims should not be denied merely as a result of the limitation of the claim period enacted as part of the Indian Claims Commission Act of 1946.

I expect we will hear convincing evidence today which will show that the Cow Creek Band was never given proper notification of their right to claim under the 1946 Act.

In view of that and other apparent omissions by the United States in its dealings with the Cow Creek Band, I have introduced in the House 2822, the counterpart to Senator Hatfield's bill in the Senate, which is intended to grant the Cow Creeks the right to make the appropriate claims against the United States.

Today's hearings should serve to clarify the need for this bill.

Senator MELCHER. Thank you very much, Jim.

Without objection, I will make an opening statement of Senator Mark Hatfield part of the record at this point.

Hearing no objection, it is so ordered.

[Statement appears on page 6.]

Senator MELCHER. Our first witness today will be the Honorable Forrest Gerard, Assistant Secretary of the Interior for Indian Affairs.

Forrest, welcome to the committees.

STATEMENT OF HON. FORREST GERARD, ASSISTANT SECRETARY OF THE INTERIOR FOR INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR, ACCOMPANIED BY RALPH REESER, DIRECTOR OF CONGRESSIONAL AND LEGISLATIVE STAFF, BUREAU OF INDIAN AFFAIRS

Mr. GERARD. Thank you, Mr. Chairman.

I am accompanied by Mr. Ralph Reeser, the Director of Congressional and Legislative Staff in the Bureau of Indian Affairs.

I have a fairly short statement, and, with your permission, I would like to read it into the record.

Senator MELCHER. That is fine. Please proceed.

Mr. GERARD. Mr. Chairman and members of the committees, I am pleased to have this opportunity to present the views of the Department of the Interior on S. 668 and H.R. 2822, bills to permit

the Cow Creek Band of the Umpqua Tribe of Indians to file with the U.S. Court of Claims any claim the band could have filed with the Indian Claims Commission under the act of August 13, 1946.

In 1946, Congress passed the act of August 13, 1946, commonly known as the Indian Claims Commission Act. That act established the Indian Claims Commission to hear the claims against the United States of any Indian group of the United States and Alaska.

Section 12 of that act provides that no claim which arose before August 13, 1947, and which was not presented to the Commission before August 13, 1951, may be presented to any court or administrative agency for consideration, nor would such a claim be entertained by Congress. S. 668 and H.R. 2822 would waive this section for purposes of the claims of the Cow Creek Band of the Umpqua Tribe.

It is the position of the administration that the statute of limitations in section 12 of the Indian Claims Commission Act should not be waived unless the tribe can demonstrate that extraordinary circumstances led to their not filing a claim with the Commission before the 1951 deadline. We believe that case-by-case exceptions to section 12 should not be routinely considered.

Originally, it was our impression that the claim the Cow Creek Band wishes to file with the Court of Claims was one based solely on the mispayment of $12,000 to be paid to the band under an 1853 treaty ceding 800 square miles of land to the United States. The band alleges that after the first two payments had been made under that treaty, there is evidence that the majority of the members of the Cow Creek Band went into hiding in the mountains to avoid the Rogue River War. Subsequently, the 18 payments remaining under the terms of the treaty were paid to another group of Indians which happened to include about 45 members of the Cow Creek Band, located on the Grande Ronde Reservation.

The reasons for payment to different tribes and the splinter group of the Cow Creek Band remain unclear. At any rate, the Cow Creek Band claims that the U.S. Government made no effort to locate the rest of the band, and as a result the absent majority received nothing.

After passage of the Freedom of Information Act, members of the Cow Creek Band for the first time gained access to documents—tribal rolls, censuses, and U.S. records of payment—that they believe support a claim for payment of the moneys that were allegedly paid to a different group of Indians.

Just 2 days ago, my staff met with the attorneys for the band and were presented with unanticipated additional information regarding the claims of the Cow Creeks. They were informed at that time that the claim is far more complex and of a far larger magnitude than we had originally believed. It was also made apparent that the band has known about the claim for many years and never specifically filed with the Indian Claims Commission.

Our own research has shown that the Cow Creek Band is specifically mentioned in at least two opinions of the Commission, which leads us to believe that at least some members of the band were familiar with the purpose and functions of the Indian Claims Commission.

Along with the new information concerning the claim of the Cow Creek Band came information about early efforts of the band to file a claim. Included are a number of affidavits signed by members of the

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band in which they state that they made numerous attempts to obtain information, assistance, and records from the Bureau of Indian Affairs regarding the filing of their claims, and they were consistently denied such help and were never advised by the Bureau of the existence of the Claims Commission or of the statutory deadline in the Indian Claims Commission Act.

In light of this new and significant information and the brief amount of time the administration has had to examine it, we request more time to formulate a position on the two bills. Until we have had the time to evaluate this new information, we do not favor the passage of the legislation.

With respect to section 3 of the bill, however, I can tell you that we have some grave concerns with it and are opposed to its enactment. We believe that if the Cow Creek Band is allowed to file a claim with the Court of Claims the procedures prescribed by the Indian Claims Commission Act should be strictly followed. The band should gain no advantage over tribes who filed their claims within the statutory time frame.

Section 3 would give the Court of Claims authority to award to the band court costs and attorneys' fees. The Indian Claims Commission Act, in section 15, provides that the Commission fix the fees of the attorneys, but that those fees should not exceed 10 percent of the amount recovered by the tribe. The fees would then come out of that amount. We believe that the procedure set forth in section 15 should prevail.

We also believe that section 2 of the bill is somewhat unclear. That section would allow the Court of Claims to make "appropriate deductions for all offsets, counterclaims, and demands" that would be permitted under the third paragraph of section 2 of the Indian Claims Commission Act. That paragraph, however, allows the Indian Claims Commission to make "appropriate deductions for all payments made by the United States on the claim" as well as for offsets, counterclaims, and demands. We believe section 2 should be amended to be completely consistent with that paragraph of the Indian Claims Commission Act.

In short, we ask that we be allowed more time to comment on the advisability of waiving the statute of limitations in this case; we oppose section 3 of the bill allowing the Court of Claims to award court costs and attorneys' fees; and we ask that section 2 of the bill be clarified to reflect accurately the language of the Indian Claims Commission Act.

This concludes my prepared remarks. Mr. Reeser and I would be happy to answer any questions you may have.

Senator MELCHER. Senator Hatfield?

Senator HATFIELD. Mr. Chairman, I would first like to thank you for providing us the opportunity for this hearing.

I do have a statement that I would like to enter into the record and indicate merely that this bill I have sponsored and introduced, along with my colleague Senator Packwood, is, I think, a very important measure, one that will right an injustice, correct a wrong that has existed for quite some time, and I am very hopeful that Mr. Gerard will be able to give the full support and weight of the BIA behind this bill at a time appropriate, when he has had an opportunity to delve further into the matter.

I am sorry that I am late, but I just wanted to indicate my appreciation to you, Mr. Chairman, and Mr. Gerard, hoping that we can now spend most of the time hearing from members of the tribe and other parties.

Senator MELCHER. Thank you.

Without objection, your prepared statement will be made a part of the record at this point.

[Material follows:]

OPENING STATEMENT OF SENATOR MARK O. HATFIELD

I welcome today, members of the Cow Creek Band of the Umpqua Tribe of Indians, representatives of the BIA, and other interested parties to a joint hearing before the Senate Select Committee on Indian Affairs and the House Committee on Interior and Insular Affairs. The committees have been called upon to receive testimony on S. 668 and H.R. 2822. These are companion bills that would waive the statute of limitations in the Indian Claims Commission Act and permit the Cow Creek Band of Umpqua Indians to file suit in the U.S. Court of Claims for alleged failure of the Government to uphold treaty obligations. The claim stems from a treaty entered into by the Cow Creek Band and the U.S. Government in 1853 in which the Band ceded 800 square miles of aboriginal land in exchange for $12,000 and a reservation.

Today the Cow Creek Band will testify that they did not file suit for their claim between 1946 and 1951 as required under the Indian Claims Commission Act, because they were not notified by the Government of their opportunity to do so. It is my hope that through this legislation, members of the Cow Creek Band will finally have the chance to exercise their constitutional guarantee and present their claim. Congress should use this opportunity to ensure that due process is not denied this deserving band of native Americans.

Senator MELCHER. Forrest, I have three questions.

First of all, on section 2, you would want it adjusted to reflect the same conditions that existed before the Indian Claims Commission?

Mr. GERARD. We would propose that section 2 of the two bills before us, yes, reflect the language in the referred section in the Indian Claims Commission Act—section 15.

Senator MELCHER. Then, in section 3 of the bill, which is a very short section but which would allow the Court of Claims to award to the prevailing parties, other than the United States, the cost of reasonable attorneys' fees and court costs not to exceed 10 percent of the amount recovered by such party—if that were not in the bill, what would govern the recovery of the costs for the band?

Mr. GERARD. If the language in section 3 were not in the bill and Congress chose to waive the statute of limitations, I presume that the language in the Indian Claims Commission Act would be the guiding factor.

The point we are trying to make, Mr. Chairman, is this.

Senator MELCHER. What would the difference be?

Mr. GERARD. The problem here is this. Section 3, as written, would authorize the payment of court costs and attorneys' fees, and, at no time, to my knowledge, were any of the other tribes who filed in a timely fashion before the Commission ever provided that benefit. They incurred that cost out of the claim.

Senator MELCHER. Under their usual procedures, if a successful tribe or band gained the award before the Commission, was their any limitation on how much of the award could go to the attorney's fees?

Mr. GERARD. Not to exceed 10 percent.

Senator MELCHER. So, the "not to exceed" is compatible, but the difference you are pointing out is that that amount should come out of the award itself?

Mr. GERARD. That is correct, sir.

Senator MELCHER. Enlighten me, Forrest. Was that properly enforced? How does the Commission know what a group of attorneys is going to receive out of an award?

Mr. GERARD. My recollection is that the claims attorneys' contracts had to be approved by the Department of Interior and they obviously had to maintain fairly accurate records of the expenses they incurred over the years, so that when a final judgment was handed down——

As you may recall, Mr. Chairman, before the Judgment Distribution Act was approved by Congress, we used to deal with these awards on a case-by-case basis, and the language of those bills generally pointed out that attorneys' fees and other costs would come right off the top. That was dealt with generally in legislation.

Senator MELCHER. I see.

Mr. GERARD. It was paid by the Secretary out of the judgment awards.

Senator MELCHER. Yes. The Secretary actually took charge of taking part of the funds right off the top and paying it to the attorneys.

Mr. GERARD. That is correct.

Senator MELCHER. My last question is this——

Forrest, we are going to give you a series of questions which may take a little research and a little work by you, and we would like you to answer the questions for the record.

They are: An interpretation of the responsibility of Federal officials in notifying the tribes—in this case the band—in assisting them in their potential claims during the 5-year filing period under the Indian Claims Commission Act; and—this will take some research, I imagine—to your knowledge, did the BIA ever require receipt of notice that tribes had been informed of the potential claim?

Mr. GERARD. I really cannot give you an accurate answer to that question, Mr. Chairman, until we do have an opportunity to probe the records.

Staff informs me that we will probably have to order a lot of them out of Archives, given the time period we are dealing with here. For that reason, of course, we have asked for additional time.

Senator MELCHER. We would also like, for the record, if you could, for you to explain the difference between the legislation that was vetoed by President Hoover in 1932 and the bills we have before us.

We would also like to be enlightened on this. What facts did the Freedom of Information Act reveal that were not available to the tribe during the period of 1946 to 1951?

Then, since previous court actions have solved claims on behalf of the Umpqua Tribe, what factors distinguish the claims of the Cow Creek Band from those prior court actions?

And then, if this legislation passes, what are the elements of the claim that you would bring before the court on behalf of the tribe?

I think I misstated that. What are the elements that you think the tribe should bring before the court?

My last question is this. If you want additional time, could you tell us about how much time that would amount to?

Mr. GERARD. That was one of the questions I posed to staff this morning, and as Mr. Reeser is going to carry a lot of the burden of the work, I am going to let him give the committees some estimate.

Senator MELCHER. Mr. Reeser?

Mr. REESER. Based on the resources that we have now, we probably could get something up in about 4 weeks, but that will not include the information we are going to have to order from Archives.

So, we may not have a final answer, but we may be able to get a partial report up in 4 weeks.

Senator MELCHER. Well, I think we would like to be in a position to have that information prior to the end of July so that it would permit this committee to take whatever action it would like to take prior to the so-called August recess.

Mr. GERARD. Mr. Chairman, we will make a good-faith effort to abide by your request and maintain close contact with the committee staff so that they will know the progress we are making.

Senator MELCHER. Thank you.

Without objection, the answers will appear in the record at this point.

[Material was not supplied at date of publication.]

Senator MELCHER. Thank you both very much.

Now we have representatives of the Cow Creek Band here before us today. I have a list of 10. Is that correct, might I ask?

Mr. THOMAS. That is correct, Mr. Chairman.

Senator MELCHER. I do not believe the table is appropriate for all 10 at one time, but I wonder if these 5 could approach the witness table right now: Ellis Buschmann, Sue Shaffer, Charles Jackson, John Young, and Stephen Dow Beckham. I wonder if those five could approach the table in a group.

We have, at least in the case of Sue Shaffer—we have a number of prepared statements. I will encourage all of you with prepared statements to summarize your statement. Each of the prepared statements will be made a part of the record.

Let us just proceed in the order I just named.

Mr. Buschmann? Mr. Buschmann, you are president of the Tribal Council?

Mr. BUSCHMANN. Yes, Mr. Chairman.

Senator MELCHER. Please proceed.

STATEMENT OF ELLIS BUSCHMANN, PRESIDENT, TRIBAL COUNCIL, COW CREEK BAND, UMPQUA TRIBE OF INDIANS; ACCOMPANIED BY SUE SHAFFER, TREASURER, TRIBAL COUNCIL; CHARLES JACKSON, VICE PRESIDENT, TRIBAL COUNCIL; JOHN YOUNG, DIRECTOR, TRIBAL COUNCIL; STEPHEN DOW BECKHAM, PROFESSOR, LEWIS & CLARK COLLEGE; JACK ULAM, MAYOR, CHILOQUIN, OREG.; LOUELLA MICHAELS, DIRECTOR, TRIBAL COUNCIL; AMARYLLIS FREEMAN, DIRECTOR, TRIBAL COUNCIL; NAOMI REIBE GOULD, DIRECTOR, TRIBAL COUNCIL AND ROBERT THOMAS, TRIBAL ATTORNEY

Mr. BUSCHMANN. Mr. Chairman, and members of the committees, my name is Ellis Buschmann. I reside at 1291 Speaker Road, Wolf

Creek, Oreg. I am the chairman of the Cow Creek Band of the Umpqua Indians. We have met as a tribe for as long as I can remember.

The older people lived in the hope that the Government would someday make a just settlement of their claim. Even the older ones, who held much to the old ways of our people, knew that what had happened to them was not right. Not only had they been pushed off their land in their youth, but many had to hide in the hills for fear of being shot.

History often records the Indian as dour and solemn. That was not their natural way. They were much interested in their games and dancing; and, among the Indians themselves, playing jokes on one another was a great sport. After they lost their homes and their very way of life, the sadness they carried in their hearts did make them solemn.

I would say, for all of my tribe, to sum it up in a few words that, as far as the Government was concerned, we were truly the forgotten people.

Had the Indians been aware that they were signing their land away—what could they have done? They had no choice. Bows and arrows could not compete with bullets. On the other hand, the people signing the treaty had experience in what it meant to buy and sell. The Indians were considered primitive; yet, they had love and respect for the land and realized the need to protect it. It does not seem that the white man has the same feeling.

Because of its great natural beauty, our treaty land provides a very desirable place to live: Hunting, fishing, camping are relaxations that all can enjoy. Some of the land has rich river-bottom soil for farming.

During the last week of May 1979, about 2,000 sheep were brought in by a California rancher to graze for the summer on what is now Forest Service land. Last year, when our people went to the huckleberry patch for our annual gathering, there was sheep manure all around, and the odor was terrible.

You might ask me, "What did the land mean to your people?" I could answer, "The very meaning of our life." I might ask you, "What is the most important thing that the white man's god has given you?" The Indians' belief is that the most meaningful thing the Great Spirit gave to us was our land. The removal of the Indians from this land was like the removal of the spirit from the body.

The English language has no word to describe the pain, the anguish, and the shock our people felt at being torn from their homeland. It is truly a miracle that they could adjust to such a different way of life. Could you and I?

This is the past. Now we must look to the future of this tribe. At the present time, our Tribal Council, along with the South Umpqua Historical Society, is trying to establish a museum in Canyonville. Mr. Lawrence Boyle, the grandson of Isaac Boyle, who was the first white man to trade with our people up the Umpqua, has generously donated a choice piece of real estate as the museum site. It is planned that this museum will be equally divided between the history of the pioneer white settler and the Indian history.

It is my hope and dream that this museum will become a reality so that the records and history of our people will be preserved for the generations to come. I am convinced that the future of this tribe as a

group is secure. Our families have remained united through all the years of adversity. They will remain united in the future.

I feel that our ancestors, who have passed over the Great Divide, and the Great Spirit too will bless you for hearing our people today. I thank you.

Senator MELCHER. Thank you very much. Mr. Buschmann.

Ms. Sue Shaffer?

Ms. SHAFFER. Mr. Chairman and members of the committees, I wish to thank you for giving my people the chance to appear before you today. We have long strived for this day. I wish also to thank Senator Mark Hatfield, Senator Bob Packwood, and Representative Jim Weaver, and all others who have put forth effort on behalf of this tribe.

My name is Sue Crispin Shaffer. I live at 581 Fairchild Street, Canyonville, Oreg. I am a director and treasurer of the Cow Creek Band of the Umpqua Indians. I am the daughter of Ellen Furlong Crispen, granddaughter of Mary Thomason Furlong, and great granddaughter of Susan Nonta Thomason. I identify myself as I have been identified throughout my lifetime, as an Indian of southern Douglas County, Oreg.

My mother was the eldest grandchild of William P. and Susan Thomason and very close to her grandmother. Susan was a remarkable woman. She was a fullblood Cow Creek medicine woman and midwife. Grandmother Thomason, after she was married and returned to Elk Creek, which later became Drew, Oreg., doctored many families including the white pioneer families as well as the Indian people. She was proud of her heritage and the customs of her people, and she instilled this feeling in her children and her grandchildren.

During my mother's lifetime, she tried, with unending patience, to get the Bureau of Indian Affairs to recognize the rights of her people. She read and researched every bit of information she could find relative to our claim. Her letters and records show that she gained the support of such people as Congressman William C. Hawley and Senator Charles McNary. She solicited help from the U.S. Attorney General and wrote continuous letters to any source where she thought she might get helpful information.

When inquiries were made to the Bureau of Indian Affairs, the stock answer was, "No; you are not reservation Indians; this does not apply to you." How discouraging it must have been for her to have the Commissioner of Indian Affairs write and tell her that they could not find the treaty—and we have the original letter in our files today. What a demoralizing effect it must have had on all our people when President Hoover vetoed our bill in 1932.

I remember all of the families gathering at my grandmother's house for the usual Sunday meeting. It was like a wake. Everyone was so discouraged. I was just a little girl then, but I remember them trying to comfort each other. They had had such high hopes, and then, nothing.

In conclusion, I would like to make it clear that, in spite of all the obstacles my people have known, they have always known their own history and who they were. They have remained unified in their efforts to have their treaty honored and have continued to meet with each other.

After working a lifetime to establish the rights of her people, my mother died with the faith that one day it would all be resolved.

The old records that we have to present to you today will bear this out.

During the time of the Indian Claims Commission in 1946 to 1951, the tribal groups continued to meet and went wherever meetings were held where they might get useful information.

In the old diaries of my aunt, Mamie Furlong Denny Archambeau, it shows several places where they went to meetings at this time. After all the long years of struggle, had they been aware that they could have presented their claim, could anyone doubt that they would not have done so?

In a plea for peace among the whites and the Indians in 1854, Mary Huntley Sawtelle, who settled on the North Umpqua in 1850, made this moving prayer:

> Oh, Almighty God, Father alike to red and white man, Thou hast the power to compel the men of our mighty nation to keep the treaty now about to be signed between these two nations of red and white men. Grant, Oh, God, that my words may be kept—in letter and in deed, truthfully kept.

I thank you for listening to what I had to say.

Senator HATFIELD (acting chairman). Thank you very much, Ms. Shaffer. Your entire statement will be placed in the record as you have presented it to the committees.

Ms. SHAFFER. Thank you.

Senator HATFIELD. We will be happy to hear now from Mr. Charles Jackson, vice president of the Tribal Council.

Mr. JACKSON. Mr. Chairman, members of the committees, I am Charles Jackson. I live at Route 2, Box 58, Tiller, Oreg. I am vice chairman of the Cow Creek Band of Umpqua Indians. I am a vice cochairman of the Indian Economic Development for Douglas, Coos, and Curry Counties. I am on the board of directors for the South Umpqua Historical Society.

This is a summary of my statement. It is cut down quite a bit, starting here.

I have a small museum and a log schoolhouse which was built in 1906. I have restored this, and it is on my property at Drew, Oreg. Each school year, I have students from as far as 60 miles away come to my museum. I give demonstrations on arrowheadmaking, knifemaking, and all sorts of tools. I do this for the Cub, Boy Scout groups, and Jaycees.

Our Indian culture is now referred to as folk culture. I have interviews with newspapers and the Douglas County Museum on our Indian culture and folk art. To me, this is my way of life, and this is the way I have lived it. I live in a log house my mother and father built on their homestead. This land was once the home of my great grandmother, Susan's, people.

Our family has always been referred to as Indians. Sometimes this was very hard, especially in school when I was young. In grade school, we were called Indians. Everyone else always thought that meant we were some kind of a primitive person. I have lived with this all my life.

On June 1, 1979, a neighbor of mine that I have known all of my life told me that I should not wear a wristwatch because if it were not for the white man I would not have a watch. I have always heard

things like this. I am not a full blood Indian, but if I were, I do not believe my life would be any different.

From this time period—from 1946 to 1951—to my knowledge, not one of our people had any knowledge of a right to any claims. We were in contact with the BIA through this time period, but it was never mentioned to any one of us. If we had know of any right to claim, I am positive we would have tried then, as we have tried so many other times.

I believe our people in the Cow Creek Band of the Umpqua Indians have a legitimate claim here. Our great ancestors have always been the Indians of this area; no matter what they have been called, no matter where they have gone, this area has always been their home. There are many documents telling of our people living here in the mountains, and I will say that, so far, there is no one anywhere that has come within 1,000 years of accurately dating the existence of our people.

Several of our people have gone to school under the BIA. I went to Oakland Junior College, Oakland, Calif., under the BIA, as an Umpqua Indian, and then was terminated without a hearing or notification. I do not believe this termination was fair or just to any kind of people.

After so many years of our people trying to get someone to listen to them, I have hope that, through these Indian hearings, the U.S. Government will listen to the facts and make a fair and just settlement for our people. Our people have been working toward this since 1853. So many times, we have been told that this or that does not apply to our people, or we do not qualify for some reason. This has been a constant uphill struggle for several lifetimes of our people here in the United States of America to be dealt with, fair and just. There always seems to be several billion U.S. dollars given away to foreign lands. Now, let us settle with our own people. Let us give the children a chance for a proper education.

There is money available for education, but it is very hard or impossible to get because we are not reservation Indians. This is the same old story our people have been told so many times in the past. Or we are told that we cannot qualify because we are terminated Indians.

My great uncle, Louis Thomason who was born in 1882, told me when I was about 10 years old that some day in June the leaders of our great Government of the United States would come to us and settle with us for what had been taken away and for the death and suffering that our people had gone through. He said our people, at one time, were very rich in land, water, fish, deer, and berries, but, most of all, rich in their way of life and had a whole world full of peace and contentment. He died in 1949 without seeing that day in June but still believing in the great Government.

I could go on for several pages, but I realize other people want to speak, and many things have to be said.

I thank you for hearing my testimony.

Senator HATFIELD. Thank you, Mr. Jackson, for summarizing your written statement. As I said before, your complete statement will be placed in the record.

As you recognize, there are a goodly number who wish to be heard today, so when you summarize your statements, it is very helpful to giving other people an opportunity, too.

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Our next witness, in order of the listing I have here, is Mr. John Young, director of the tribal council.

Mr. YOUNG. Thank you, Mr. Chairman.

My name is John Young. I live in Myrtle Creek. I am a director of the Council of the Cow Creek Bank of Umpqua Indians.

I wish to thank all of you people for allowing our people to be here today.

I would clarify in the first part of my testimony where the name "Cow Creek" comes from. This name was given to our people by Gen. Joel Palmer, the Indian agent who negotiated the treaty for our people in 1853. This name was referred to from the creek where the treaty was signed—Cow Creek.

Prior to this time, all the people and their land were known as Miwaletas, and there were several bands of Miwaletas. Upon becoming chief of all the bands who made up the Miwaleta Tribe, the chief gave up his own name and took the name Miwaleta. Many generations of these families in the tribe recognized the land along the Umpqua as their home ground. They were referred to, in general, as the Umpquas, or Upper Umpquas, rather than by the tribal name.

My tribal descendency comes through both my great grandparents, Jean Baptiste—known as Tom—and Clementine Petit Rondeau. Grandfather Rondeau was born in 1839, 1840, or 1842. He died when I was 10 years old in 1936. He was a very active man up to 2 days before he died. He said he was tired and his usefulness was over, and so he just died.

My memory of him is his playing with us kids and telling us stories. Some of these stories were of long ago, and some were of his own life. This was the way that our people passed on the history of our people from generation to generation. These stories were always told outside, generally in the yard underneath the shade of a big oak tree or around the fire at the same spot. He would sit in his rocking chair with his blankets around his shoulders; us kids would sit on the ground around him; sometimes there would be 3 or 4—sometimes there would be 15 or 20. He told these stories over and over again. That was the way our people passed on their history.

One of the stories was of the war between the mountain people and the coastal people—how they started the Great Fire. The coastal people sent burning kites inland on the westerly wind and started it. This was the time they became known as Miwaletas, meaning small, long-time-ago people, since there was just a handful of people left.

I have used the terms, Indians, and tribe, and band, but I never once heard my grandfather refer the people other than "the people," or "our people."

He told of the gathering of our people for the signing of the treaty. He said there was much happiness and celebrating. The white man's army was going to take care of them. There would be no more killing of the people. They could live in peace forever and have their own land where the white man could not bother them anymore.

He told of the army helping to build a fence around a small piece of this land, of buildings on it, of plowing it and helping them to seed it. They gave some of the people clothes, blankets, and a few cattle.

He said that later the army came back and took everything. Some who protested were shot; some who did not protest were shot anyway.

He told of them running to the mountains with the army chasing them. He said the bunch he went with went south up Cow Creek into the mountains. Some starved to death, for they had nothing but what the land would furnish, and it was winter.

He said they stayed in the mountains for a long time. When they came out, he worked for a white settler. This white settler wanted to help them. He went to the camp where they were living and told them, if they went to the Grand Ronde Reservation, they would be given blankets, and food, and clothing, and a place to live.

The people no longer trusted the white man's word. So, they sent him as a runner to see what this reservation was like. Shortly before this, his brother was shot and killed. He was rounding up the settler's milk cows to put them in the corral for the night when two white hunters came by and just shot him. For this reason, he could only travel at night for fear of being shot, as his little brother had been.

The family was much saddened by such a senseless killing of the young boy. They started calling him Tom, so he took the name of Tom.

He said it was a dark hour of the morning when he got to the first village of the reservation. He waited until light to show himself. He said that houses were made of sticks, some with rock walls and some with stick roofs. He said the people were sick and dying—starving to death. They had no food, no clothes, no blankets. They were ashamed for they had nothing to offer a tired traveler. He needed moccasins, but they were all barefooted. He said the people were all mixed up. He found some who could speak. He could find none who could speak his language, but he was able to converse with them in the language that is called the traders' jargon.

He said he went to other villages, and they were all the same. He said that in one of the houses he looked into there was a dead woman with a baby trying to nurse her. He said he left that night. He said it did not take him long to get home for he ran all the way.

When he got home, he told his people of the terrible things that he had seen. He said he would never go to a land that had nothing but sticks and rocks. If he was going to starve, he would do it in his own land.

All of these people stayed. None of them went to the Grande Ronde Reservation. Some of the Indians worked for the white man. Grandpa Rondea married my great grandmother, Clementine Petit.

As the land filled up with whites, it became harder and harder for the Indians, so they moved farther and farther up the South Umpqua River, where they finally came to rest in the mountains, where they and 14 of their 16 children and many of their descendants are buried in a family cemetery. Two of these children are still alive.

They lived mainly off the land—goldmining, hunting, fishing, making clothes from tanned animal skins, such as moccasins, shirts, and pants. They made rawhide lariats, saddles, and packsaddles. They took these by packtrains to Salem and up and down the Willamette Valley to sell to the white settlers.

They and other members of the tribe taught me, as I have taught my children the customs and traditions and history of our people—to love and respect the land and all that is in it; to use what you need but not waste; to use the natural resources in good judgment.

I thank you for listening.

Senator MELCHER. Thank you.

Now we will hear from Mr. Stephen Dow Beckham, professor, Lewis & Clark College.

Mr. BECKHAM. I am Stephen Dow Beckham of 1389 Southwest Hoodview Lane, Lake Oswego, Oreg.

I come before the committees today to speak as a historian who has written extensively about the Indians in the Pacific Northwest and with a deep familiarity with the history and development of relationships between the Cow Creek Band of Umpqua and the Government of the United States.

First, I would like to answer Mr. Gerard's question or pondering about these people.

The Cow Creek Band of Umpqua are a distinct group in the Umpqua River Valley, and they are not the same people with whom the Government negotiated the Umpqua treaty—the lower Umpqua Treaty of 1855. There were four treaties negotiated in that valley, and these people are the descendents of the Cow Creek Band of Umpquas whose treaty was negotiated in 1853 and ratified in 1854.

I come before you today also because of my deep concern that the Umpqua Indians, and the Cow Creeks in particular, have endured nearly 130 years of injustice and at times unconscionable treatment by the Government of the United States and by the citizens of this country.

The lands of the Cow Creeks were bisected by a main route of travel, the Oregon and California Trail which ran south from the Willamette Valley to the Sacramento Valley of central California. From the Hudsons Bay Co. trappers and traders of the 1820's and 1830's to an onrush of goldseekers after the year 1848, this land was bisected and crossed by those who were moving north and south along the western part of the Pacific Slope.

The attractions of that valley and the land of the Cow Creeks undoubtedly would draw settlers, and such began in the early 1850's when, under the Donation Land Act of 1850, those settlers began moving onto the lands of the Cow Creeks, even though those lands had not been cleared by prior treaty negotiation or land cession.

Indian lands were confirmed in Oregon Territory by the Organic Act of 1848. Nonetheless, several white families moved into the land of the Cow Creeks and hundreds of goldseekers did so in 1852–53 when a minor goldrush occurred in the valley of Cow Creek, itself.

The Cow Creek Indians, speakers of one of five Athabaskan language dialects in southwestern Oregon, found that these newcomers were soon fencing their lands by splitting rails. The settlers and miners prohibited the Indians from field burning which was a common practice in renewing the berry patches and seed crops in that valley. The fires would, of course, burn up the split rail fences of those settlers.

The settlers and goldminers brought in hogs. The hogs ate up the acorns and rooted out the bulbs which were staples in the diet of these people.

Using guns, the settlers killed off the deer and the elk, and, of course, from their goldmining, the debris that cascaded down their streams wiped out some of the salmon runs and the steelhead.

William Riddle, one of those white settlers who arrived in October 1851, wrote about the Cow Creeks and said, "They lost all hope. In

fact, they were dying so fast that they were unable to bury their dead but placed them upon driftwood and burned them. After the death of the chief, the Indians, who were not affected with the fever, scattered into the mountains, leaving some of the sick who were unable to follow to shift for themselves. More than half of Miwaleta's Band died.

The years 1853 to 1856 were ones of almost constant warfare between whites and Indians in southwestern Oregon. During this period, various bands of Oregon mounted volunteers, also known in the region as the "Exterminators," made forays through the lands of the Cow Creeks. They murdered several of the members of that tribe or band.

A series of these events—murders, the goldrush, the settling of whites on Indian lands without prior cession—led in September 1853 to the negotiation of the Cow Creek Treaty. The survivors of the Cow Creek Band, in that agreement, the second ratified treaty to come out of the Pacific Northwest, ceded for $12,000 and a small reservation their aborginal lands, nearly 800 square miles, for two and one-third cents per acre at the very time when the Government Land Office, since 1850, disposed of land in Oregon at a minimun price at $1.25 per acre.

The Cow Creeks moved to their small reservation within their aboriginal land following the ratification of their treaty in April 1854. After, the outbreak of hostilities sparked by miners in the Rogue River Valley, massacreing the Indians of the Table Rock Reservation in that valley, warfare spread throughout southwestern Oregon, and the Cow Creeks fled into the foothills of the Cascades and the Umpqua Mountains.

Others who remained on the small reservation were forced to begin a trail of tears to the northward in the freezing cold in the late winter of 1856 when some of those people were taken to the Grande Ronde Reservation.

Many times the Cow Creeks have sought an opportunity to have their day in court, to argue for a conscionable settlement for their aboriginal lands. The parents and grandparents of those who are before you today labored year after year for that opportunity entirely at their own expense and without any legal assistance from the Bureau of Indian Affairs. These people five times got bills introduced into Congress. When their bill of 1932 was approved by both the House and the Senate, it was vetoed by President Hoover on the grounds that the country could not afford such legislation in the midst of a depression.

At times, the feelings of the Cow Creeks must have been depressed as well. Long have they labored for an opportunity to tell the court how their lands were taken from them.

As a person very familiar with the course of American history, as a person deeply impressed with this tremendous amount of specific historical documentary material that identifies these people, I feel strongly that this case is one demanding action, and I urge you to approve this proposed legislation and permit these people to have their day in court.

Thank you.

Senator MELCHER. Thank you very much.

The evidence you present to the committee is impressive, and the obvious injustices are properly noted in the record.

I want to ask the members of the band this question. Contrary to popular belief, the unfortunate belief of many people in this country, the status that you have as members of the band does not exempt you from any form of taxation that is applied to anyone else in the same area, does it?

Ms. SHAFFER. Do we get any tax exemption?

Senator. MELCHER. That was the question.

Ms. SHAFFER. Heavens, no. We pay right down to the last penny.

Senator MELCHER. I want that on the record. I think it is an unfortunate misconception on the part of a lot of Americans that somehow Indians escape taxation. While that is true in some instances for Indians who reside on reservations, obviously, it is not true of any of you. I think it is important to establish that on our record this morning.

Thank you all very much.

Mr. Jack Ulam, Ms. Louella Michaels, Ms. Amaryllis Freeman, Ms. Naomi Reibe Gould, and Mr. Robert Thomas, please come forward.

Mr. Ulam?

Mr. ULAM. I am Jack Ulam. I reside in Chiloquin, Oreg., which is about 130 miles east of the Umpqua area where I grew up. I am from a white descendent. My families moved to the Umpqua area in about 1852 and 1853. One of my great grandfathers had a tollgate. He charged the Indians and whites alike to go through his gate.. They settled in that area and were primarily farmers.

But as a child, I moved to what is known as the Upper Umpqua area, and these six families that are represented here today, their older brothers and sisters I went to school with in a one-room schoolhouse, and I am well acquainted with the history of these six families.

Also, I saw a man sitting up here—Senator Hatfield. I knew his grandfather. He was quite a fiddler and tapdancer.

In that area, my family ran cattle and sheep and were neighbors with all these people. I was here to testify that they tried desperately for all of my lifetime—and from stories I heard from my grandfather and great grandfather—to get recognition, which never happened.

That was a pretty primitive area until a few years ago, and communication was pretty bad. I feel these people, if the had known there was an act where they could have gotten recognition, would have done so immediately.

Where I live now is an Indian town. I am presently the mayor of that town. So I feel that I am pretty well qualified to know the Indian economic problems and social, both. I have been elected twice as mayor in that town, so I do not really have a hangup with racism, I am sure.

I thank you people for listening to me, and I hope you can see fit to give these people their day in court.

Senator MELCHER. Mr. Ulam, what is the name of the town—where is your home?

Mr. ULAM. Chiloquin—just north of Klamath Falls—on the Klamath Reservation. It is terminated at this time.

Senator MELCHER. Thank you, Mayor, for your testimony.

Ms. Louella Michaels?

Ms. MICHAELS. Mr. Chairman and members of the committee, my name is Louella Rondeau O'Dell Michaels. I reside at 511 Southeast

H Street in Grants Pass, Oreg. I am a member of the board of directors for the Cow Creek Band of the Umpqua Indians. I am vice chairman of the board of the Southwest Indian health project, and I work for the Jackson Josephine Indian Services in Medford, Oreg.

Very briefly I would like to summarize that I have attended our tribal meetings for approximately 45 years, since before I ever attended school. By the time I was 16, I was attending these meetings as an adult regularly. In all these many, many years, I do not recall that we were ever informed that we should file a claim with the Indian Claims Commission. If we had ever been informed, we would certainly have done so.

No one has ever actually informed us of our legal rights. Through all these years and years of trying to be heard, someone has at last given us a chance.

In closing, I would like to express my sincere thanks to everyone who is here, listening to us, today, giving us a chance to speak for our people back home in Oregon.

Thank you.

Senator MELCHER. Thank you.

As the director of the Tribal Council, could you inform me if you have a tribal roll or a band roll?

Ms. MICHAELS. There have been several rolls made up. In fact, we are working on one right at the present, updating it.

Senator MELCHER. Does the Council assume authority for the preparation of that roll?

Ms. MICHAELS. Yes.

On the table are some of our books—some of our history. There are past rolls registered in those, and we are assuming the responsibility for creating our rolls.

Senator MELCHER. Thank you.

Ms. Amaryllis Freeman?

Ms. FREEMAN. Ladies and gentlemen, my name is Amaryllis LaChance Dumont Freeman. My address is Route 1, Box 287(a), Myrtle Creek, Oreg.

I am going to cut out quite a bit of my prepared statement as time is short.

I am glad to be here after 125 years for my tribe. All my life, I have been known as an Indian, at school sometimes as a "dirty half-breed," or a "lousy Indian." I have been in trouble because of this and had plenty of fights, but only when my mother was being insulted. I have always tried to do right, and I have been proud of my heritage. I have tried to pass on to my children to be proud of their heritage and take care of the land that we were born on.

A Federal ordinance was passed in 1787, one of the first laws passed to protect the Indians, and, in 1848, Oregon passed an act to insure a standard of fairness when dealing with the Indians. Of course, both ot these acts had been passed before the signing of our treaty in 1854. The terms of that treaty allowed the Cow Creeks $0.023 per acre while Donation Land claims were being sold to the settlers at a minimum of $1.25 per acre. Is this a "standard of fairness"?

Not long ago, it came to my attention that one of today's lawmakers, upon being presented information about our case, said, "I am up to my neck in these old Indian treaties and cases." My answer to that is, "Maybe the Indians have had it up to their necks, too."

I have some testimony here about some of the representatives of the BIA, but I will let you read this because it is quite detailed.

But I would like to ask you, when the merits of our case are weighed, if you would please consider the heartbreak, the tears, and the disappointments that we have suffered through the years in trying to get information. We would be turned down, or they would not get the books for us, and we would spend money to go to Portland and other places, and it would not be there. I am sure that if any of us had known 33 years ago—and I know my mother would have—and in 1946 that we would have been heard, we would have certainly been here to testify or tried our case.

I thank you for listening. The rest of my statement will go into the record.

Thank you.

Senator MELCHER. Thank you.

Ms. Naomi Reibe Gould?

Ms. GOULD. Mr. Chairman and members of the committees, I am very grateful to be here today and to have the opportunity to testify on behalf of the Cow Creek Band of Umpqua Indians.

My name is Naomi Reibe Gould. My address is 2050 West 29th Avenue, Eugene, Oreg. 97405. I am going to make my testimony brief.

I am an Indian whose roots are in the land of the Umpqua, an area which is now largely the Umpqua National Forest. I have personal identity as an Indian and am active in furthering the rights and opportunities of the Umpqua Indians as well as other tribes and bands in the State of Oregon.

I am a board member of the Cow Creek Band, Umpqua Indian Council. The council is an informal but regular gathering of members of extensive families consisting of dependents of the following people: Rainville, Rondeau, Dumont, LaChance, Parazoo, and Thomason. We meet at regular intervals, generally near Canyonville, for two purposes. First, the preservation of our cultural base as Indians of the Umpqua, and, second, to petition for redress of our grievances.

During this period that has been referred to, between 1946 and 1951, our people were continually meeting and acting and trying to do the best they could for our grievances. I know, had my family or any of the families had the information or assistance and had been informed of their rights, certainly something would have been done.

Our people are divided into three groups: the young who need help and educational assistance, the middle or working group, and the elderly group. Our ancestors homesteaded and lived on the land. There is no social security for surviving widows, nothing but welfare, and the State of Oregon is in a critical condition as far as public assistance is concerned.

Passage of the bill would open the door for tribal members. It would enable them to have the assistance so badly needed and would give them the inheritance they so justly deserve.

Now, in closing, your efforts and endeavors on our behalf are greatly appreciated by all tribal members of western Oregon. Your continued support is hereby solicited.

Chief Joseph surrendered his Nez Perce Tribe to General Howard of the U.S. Army in 1877. He ended his speech with the statement, "My heart is sad and sick. From where the sun now stands, I will fight no

more forever." My statement is different, I will fight forever—not by acts of violence and revenge but by the spoken word and written word. I shall fight as long as I shall live to bring about restoration, Federal recognition for all tribes of western Oregon, and to rectify the emotional damage effected by the governmental rejection of our cultural background and heritage.

Thank you.

Senator MELCHER. Thank you very much.

Mr. Robert Thomas?

Mr. THOMAS. Thank you, Mr. Chairman and members of the committees.

My name is Robert Thomas. I am an attorney of Klamath Falls, Oreg., and I am attorney for the Cow Creek Band.

The information I have for the committees is essentially legal, and it is summarized in the written materials we have provided the committee and the staff in prior times.

I would like so take a brief minute to explain the color coding because I think it will help you to use the material.

The orange-colored material is a legal brief. It starts out with an historical statement. There is an introduction, a summary of the claim argument, and then there is an appendix—the first of three appendixes. The first appendix is a concise summary of our legal position. The second is the Cow Creek Treaty itself, and the third is a report of the Oregon Superintendency wherein the matter of disparity in price commented on by Professor Beckham is noted by the Oregon Superintendency at an early date.

The yellow-covered material are affidavits of currently living persons who have knowledge of the effort the Cow Creek Band has made to bring this matter before the Indian Claims Commission and before the courts.

We have extensively investigated whether or not any members of this group knew of the existence or availability of remedies through the Indian Claims Commission, and there simply is no knowledge of that in the group. They simply did not know of it, and we have tried to document that. I think that if you examine the affidavits in the yellow-covered material, you will find that it is well laid out.

The tan-covered material in two volumes is what we are able to accumulate in the evidence of prior efforts, over a period dating back to the early days of this century, to put this claim before the courts of the United States. That is basically the purpose of our bill—to give the Cow Creek Band the purpose their claim in court. That is what we are asking the committees.

It has been noted by Professor Beckham that this matter has been before Congress before, and we have provided a short summary, that should be before you, of the history of the early legislation.

I would point out to the committees that the prior committees of Congress that examined this matter uniformly found merit in the claim. It was simply, for one reason or another, stopped at some point along the line because, basically, money was the thing that called it to a halt. But the claim, itself, and the reports to the earlier committees that examined it have universally and continuously found merit in the claim.

So, the only thing that stops the presentation of a meritorious claim, as it has been so found by earlier sessions of this Congress,

is the fact of the statute of limitations. As I said, the material we have presented has tried to deal with this issue as best we could.

The purpose of the bill, as mentioned, is specifically to waive the statute and allow this group of Indians, the Cow Creek Band of the Umpqua Indian Tribe, to present their claim in court.

To my right here are original records. The chairman made an inquiry about rolls. We have summarized—we have accumulated original documentary evidence, which we have here, which supports the identity of this group of people. We have that summarized also in the black-covered material that has been furnished to the staff, and we have it here if you want more.

As Ms. Michaels mentioned, the Council is in the process currently of preparing a roll of current members of this band, and it is being made on a descendancy basis, on the best information we have available, and much of that is right here, as I said, if anyone cares to examine it.

I would also like, if possible, to exhibit before the committees a map of the State of Oregon in which we have outlined the area of the land that was ceded by this treaty. It is a large area, and I think an examination of the map would show that.

With your permission, I would ask two members of the band to show that to you, to point out just where it lies. Although the map is big, if it is possible to do so, I would like to have it entered into the record of this hearing.

Senator MELCHER. Could the map be held up at this time?

Mr. THOMAS. Is it all right if they bring it forward?

Senator MELCHER. Yes.

[Map is held before the committees.]

Mr. YOUNG. This is where the treaty starts. It starts here [indicating] and goes up the divide. Here are the divide lines [indicating]. It goes to a high point and straight across the creek to a high point. Then it follows along the divide and the county line, and back to this point [indicating].

If any of you have ever been on Interstate 5 in Oregon, it goes around the rock point. It comes along the river, around to Isaac Bay and Weaver Land Claims, that they, the Indians, sold to these people previous to the treaty. So, they came around this land because they did not claim it as their land.

This is the land that was set aside by Gen. Joel Palmer as the treaty or reservation land, where they built buildings—log houses and so on.

Senator MELCHER. For the record, the area identified is approximately how many square miles?

Mr. YOUNG. I think the treaty land is not 800 square miles—about 80-some square miles. It is just a small portion.

Senator MELCHER. The entire area identified by black is 800 square miles, is it not?

Mr. YOUNG. Yes.

Senator MELCHER. And the treaty land within that—the small reservation—is possibly 40 square miles.

Mr. YOUNG. This is possibly 12 miles from this point to this [indicating]. So, the outline is only about 30.

Senator MELCHER. The entire outlined area is only about 87 square miles. The small area within is identified as what?

Mr. YOUNG. Seven square miles.

Senator MELCHER. Seven square miles—oh, no.

Let us identify this for the record. The larger area that you identified there, outlined in black, is about 12 miles at its base.

Mr. YOUNG. It would be approximately 12 miles.

Senator MELCHER. That is about 24 by 12.

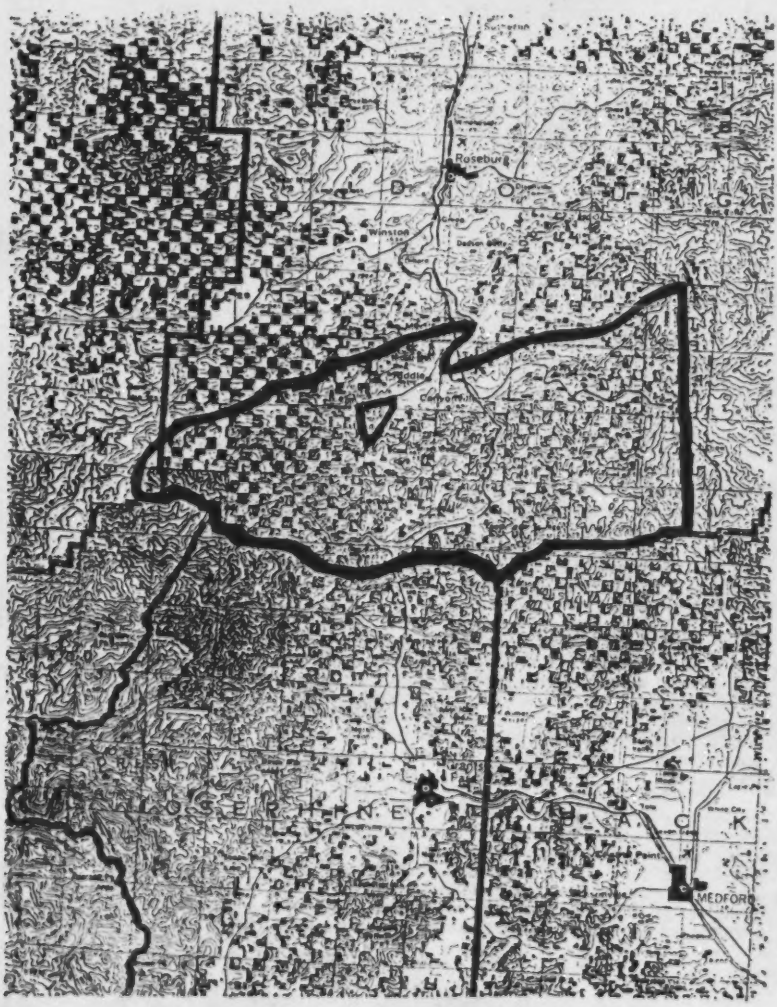
Mr. YOUNG. This is the land in the treaty that the Indians did not sell. They kept it as their land.

Senator MELCHER. A portion of the map will be made part of the record, identifying this.

Thank you very much.

Without objection, it will appear in the record at this point.

[Material to be supplied follows:]



Mr. THOMAS. Mr. Chairman, there is a smaller version of the map in the red-backed material you have there, which is historical data.

That is all the remarks I have at this time.

Senator MELCHER. Thank you, Mr. Thomas.

Without objection, the full, written statements and the materials you have provided will be included in the record at this point.

[Material follows:]

Members of the committee, I wish to thank you for giving my people the chance to appear before you today. We have long strived for this day. I wish also to thank Sen. Mark Hatfield, Sen. Bob Packwood and Rep. Jim Weaver and others for all their efforts in behalf of our tribe.

My name is Sue Crispen Shaffer, daughter of Ellen (Nellie) Furlong Crispen, grand daughter of Mary Thomason Furlong and great grand daughter of Susan Nonta Thomason. I identify myself as I have been identified throughout my lifetime, as an Indian of Southern Douglas Co., Ore. I am proud to live in the beautiful Umpqua Valley where generations of my ancestors have lived before me. My mother was the eldest grand child of Wm. P. and Susan Thomason and very close to her grandmother. Susan was a very remarkable woman. She was a full blood Cow Creek medicine woman and midwife. She was born on Elk Creek near what later became Drew, Ore. Her birthdate was Jan., 1839. She and her brother, Louis, were baptized on July 4th of that year. When she was very small her mother died and later on July 19, 1849, Nonta married his wife's younger sister, Catherine Ampkwa (Umpqua). She learned to speak several different dialects and was familiar with Indian herbs and doctoring. After she was married and returned to Elk Creek, she doctored the families of white settlers as well as the Indian people and delivered many babies. Often this meant riding alone on horseback and even crossing the river at night. Grandmother Thomason was proud of her heritage and the customs of her people and she instilled this feeling in her children and grand children.

During my mother's lifetime she tried with unending patience to get the Bureau of Indian Affairs to recognize the rights of her people. She read and researched every bit of information that she could find relative to this claim. Her letters and records show that she gained the support of such people as Sen. Charles McNary and Congressman Wm. C. Hawley. She solicited help from the U.S. Atty. Gen. and wrote continuous letters to any soucre she thought might be helpful. When inquiries were made to the Bureau of Indian Affairs, the stock answer was always just plain "No". How discouraging it must have been for her to have the Commissioner of Indian Affairs write and tell her they could not find the treaty!!!!! What a demoralizing effect it must have had on all the people when Pres. Hoover vetoed Sen. McNary's bill in 1932 that would have helped them.

Much of the correspondence that was carried on was during the Great Depression when even the 2¢ for a postage-stamp was sometimes hard to come by. This was a small tribe of people living in a rural area who did the best they knew how to try to establish themselves. In spite of one frustration after another the families that comprise the Cow Creek Umpqua descendents have continued to meet and stayed firm in their belief that one day the treaty that was ratified on April 12, 1854 would be honored. During the depression all of the families did what they could to raise money. My grandmother tanned deer hides, made gloves and other embroidered buckskin pieces; others made mocassins. I remember one Fall several of us picked prunes at 3¢ a box and part of that money had to be donated to buy gas to go to the Chemawa Indian School where a meeting was being held. Of course, we did not have the money to go to a restaurant to eat so we took our lunch from home. The most important contributing factor to the continuance of this tribe has been their firm belief that treaties negotiated with the Indians were just as binding as that of the Panama Canal.

Fur trader Alexander Ross made the first recorded encounter with the Umpqua Indians in his journal in 1818 in which he states: "There were numerous bands—all very peaceable but shy and reserved. No advance or inducement could bring the Indians into contact of familiarity with the traders—as the traders advanced, the farther the Indians receded to void them. Little history has ever been written about the gentle, peaceful bands of the Umpqua. The need to move about was a matter of survival. They dug camas roots at Camas Valley, fished up and down stream on the Umpqua, dug camas roots and fished on Klamath Lake, hunted

high in the mountains at the headwaters of the river for deer and elk. The mountains between Elk Creek and upper Cow Creek was where they hunted bear. The huckleberry patch on the Rogue-Umpqua Divide was an annual meeting place, not only for the berries but also as a social gathering where their trading was done, games were played and a little gambling too!!! Members of some of the families still meet there each Fall as generations of their ancestors did. No matter where they traveled, they always returned to the valleys of the Umpqua. History has often given the impression that the white man came to rescue the Indian from his poor way of life.

Not so!!! Our people here had the very best way of life. Our fairly mild climate, the abundance of fish, game, berries, roots and herbs made it not too difficult to maintain a relaxed life style with time for visiting and pleasure. In turn, let it be said that ecology is not a fairly new concept. It was the teachings of the Indians to their children to respect the land and protect it. The wildlife, too, that fed them, should be used with judgment. What was needed should be used but not wasted. On the other hand, let us give credit to our ancestors who were able to survive from the land alone. They did it well, much different than going camping now with all the equipment of todays advanced technology.

It is very likely that the existence of some of the Umpqua bands was never known to the white man. This concept is clearly supported by the Annual Report of Joel Palmer, Supt. of Indian Affairs for the Oregon Territory for 1853, proposing the Reservation System in which he states:

"While on my late expedition I came to the knowledge of the existence of a tribe of Indians inhabiting the country on the upper waters of the North and South Forks of the Umpqua and the headwaters of the Rogue River, called the wild Mo-lal-a-la-las. The name so nearly resembles that of the Mol-al-las of the Willamette that they have been confounded with that tribe; for the information that I have obtained satisfied me that they are a distinct tribe, speaking an entirely different language and having no connection with them.

They have had but little intercourse with the whites, being located in a remote and mountainous region off the line of travel from Oregon to California. They roam sometimes as far East and Southeast as the headwaters of the Deschutes and Klamath Lake. Their subsistence is chiefly wild game with which their country abounds, while numerous mountain streams and lakes afford a rich supply of fish. Some of these lakes are said to be 20 miles in length, with considerable margins of fertile land and surrounded with precipitous mountains. This information though chiefly derived from Indians, is so far corroborated that I put much confidence in its correctness."

Our people have been generally referred to as Umpquas but they have also, often been called Molalas, Calapooias and other tribal names. The one thing the people have been constant in is the fact that they *Have always been right here in this area*, regardless of what any agency wished to name them. The history and legends of our people have been handed down from generation to generation. Of course, now we are able to *write* it down, then, they could only tell it. Some of my mother's legends have been published in the past, best known is the story of Crater Lake, "The Mountain With the Hole in the Top". This oral history illustrates our long residency and close familiarity with the land of our ancestors. Our Indian people have been expected to give documented proof of the impossible. Other ethnic groups of people coming into this country have been given rights and granted privileges that were denied the Native American. The passing of the "Freedom of Information Act" has opened the doors for us to do much more extensive research into what has been recorded.

During the period of the signing of the treaties in Oregon between 1851 and 1868, great changes occurred in the life style of the Indian people. In reality Indian leaders could speak only for their own bands or villages but those negotiating the treaties really did not know who represented whom and there was also the wish to bunch them all together and therefore, deal only with a few "chiefs". Because of this, misunderstanding and misrepresentation often occurred. Thus, misnaming and other false assumptions started with the treaties and have been perpetuated in documents until the present day. This misinformation has caused many claim settements with the federal government to encounter great problems.

Possibly the saddest and most painful period in Indian history was during the time of removal to the reservations. It displaced the Indians from therir original homelands and most often split apart tribal groups which had the effect of weakening their religious and cultural ties. In many cases on the reservations, not only were the Indians grouped together with strangers but they were put with those

who had been their enemies. Conditions during the removal to the reservations were sad and confusing. The removal of the Cow Creek Umpquas took place during 1855 and 1856. In Indian agent Robert Metcalfe's journal dated Jan. 11, 1856, he describes the terrible conditions on the march. He was out of money and had little food. There was no forage for his team and in fact, the 8 wagons he had were unable to haul all those who were unable to walk. Death, illness and childbirth took place along the way. What a sad lot must have finally reached the Grande Ronde! Jesse and Lindsay Applegate had told them that they did have rights and that they should not be forced to go. This incarceration on reservations must surely have been directly responsible for the decline of the Indian spirit. How heartbreaking for those who had always been free to roam their beloved mountains, to live out their last days under these circumstances. Many of the Indians refused to go to the reservations but hid out in the hills. Others did go but soon managed to escape and return home to hide in the mountains. Some records used by the government state that all the Cow Creek Umpquas were removed to the Grande Ronde and yet they had access to such letters as this one from I. B. Nichols (he was a witness to the signing of the treaty) of Riddle to Supt. Joel Palmer, dated Jan. 6, 1856 which would clearly show this was not true. In his letter to Palmer, he wrote as follows: "Dear Sir: I sent you the agreement by mail last three months since. I have the receipt you sent me and send it with this note. We have nothing of interest (not sure about this last word). The Indians are in the mountains, I think we will kill them soon that is the Cow Creeks. I think they are out of ammunition." At the time, it was recorded that at least 20 men managed to escape and hide in the mountains. In May of 1856, Agent James P. Day of Canyonville was to round them all up but he failed to do so as did soldier Ben Simpson 4 years later in 1860. He reported to Supt. J. W. Perit Huntington that he took part of his command and went to get them but all he was able to find for his efforts was their smouldering campfires. They had fled to the mountains where some were to remain in hiding for several years.

The status of the American Indian has always been unique. Great Britain, France and Spain had recognized Indian governments as sovereign nations even before the arrival of the colonists in America. The U.S. Constitution also recognizes the sovereign rights of the Indian people. However, history indicates that continued pressure from special interest groups most often conflicted with federal obligations to protect the Indians. In 1832 Chief Justice of the Supreme Court, John Marshall in a case involving the Cherokees ruled that Indian tribes had the right to rule their own affairs. In truth, the reservation system did not allow them this right. Nor was it conducive to strong tribal relations. The famous Meriam Report of 1928 clearly shows the deplorable health and economic conditions and the inefficient services that the tribes received under the B.I.A. Then came the Roosevelt Administration and John Collier became the Comm. of Indian Affairs. As a result of the findings in the Meriam Report, Congress passed the Johnson-O'Malley Act in 1934. This act was passed in order to give Indian children assistance in public schools and for land acquisition for homeless bands. It is so ironic to note that at the very time these laws were being enacted, the Umpquas were trying desperately to get help and were never advised regarding what could have been available to them.

Many factors enter into obtaining an accurate Indian census. The first U.S. census was taken in 1790 but the Indians were not even counted until the 1860 census and the people on reservations were not counted or considered as part of the population. Only the "Indians taxed" were counted. U.S. Indian census date has been inconsistent and unreliable. In 1910 and 1930, special effort was made to enumerate the Indian population, however, it was not very complete or accurate. It has not always been very popular to be identified as an Indian and often the census taker did not go to the remote areas to find the people. Then, again, they were sometimes only counted as Indians if they looked that way to the census taker. It is unfortunate that the census data is used as a primary source of information, when the methods of gathering that information have changed so much from time to time. Although much of the census is not accurate, it is certainly useful in a general way and can be very useful when considered along with other information.

In conclusion, I would like to make it clear that in spite of all the obstacles, my people have always known their own history and who they were. They have remained unified in their efforts to have their treaty honored and have continued to meet with each other. After working a lifetime to establish the rights of her people, my mother died with the faith that some day it would all be resolved. The old records that we have to present to you will bear this out. During the time

of the Indian Claims Commission from 1946–1951, the tribal groups continued to meet and went wherever meetings were held where they might get useful information. In the old diaries of my aunt, Mamie Furlong Denny Archambeau, it shows several places where they went for this purpose. After all the long years of struggle, had they been aware that they could have presented their claim, could anyone doubt that they would have done so?

In a plea for peace among the whites and the Indians in 1854, Mary Huntley Sawtelle, who settled on the North Umpqua in 1850, made this moving prayer:

"Oh, Almighty God, Father alike to red and white man, Thou hast the power to compel the men of our mighty nation to keep the treaty now about to be signed between these two nations of red and white men. Grant, Oh, God, that my words may be kept—in letter and in deed, truthfully kept."

I thank you again for listening to what I had to say.

My name is Charles Jackson. I am a director and vice-chairman of the Cow Creek Band of Umpqua Indians.

I will start this statement of my Indian heritage as I was told by many of the older Indian people, friends and relatives of mine. It is the way I have lived my own life.

My first shoes were hand tanned moccasins of deer skin, made by my grandmother, Dolla Thomason Larson. I was about 12 years old when I discovered that we were the only people in our neighborhood that used rocks to grind our dried meat on for cooking. It has been a common thing in my life to go along the creeks, rivers and mountains and see the old Indian villages, the impressions of the house pits, circular impressions, trails and artifacts still on the ground. My great uncles, Louis, and Robert Thomason and my grandmother would tell me, "These are the homes of your ancestors. Do not disturb their ground." I have asked many times, "Where did our people come from?" They would point to the East. Then, I would ask, "How long have our people lived here?" They would answer, "Always." This answer didn't always satisfy my curiosity, so I would ask many more questions about how long our people had lived here in the Umpqua, Elk Creek and Cow Creek areas. The old Indian people told me our ancestors were here when the first tree grew. They said this was a cedar tree, put here for the Indians to use, the different parts of the bark for clothing, matting and material for houses, as well as a very fine soft wood for arrows and many other uses.

They said that they were here before the big mountain burned high into the sky, finally leaving a hole in the center which filled with beautiful, cold water. This mountain burning caused much trouble for the Indians. They said it was of a demon because the rocks ran as if they were water. This was the molten lava, covering up streams and lakes, also causing much land to be covered and ruined by the dust and ashes. Of course, this is Crater Lake. Our family has published articles of these legends.

I would go to the huckleberry patch when I was very young and listen to the old stories of how hundreds of Indians would gather there; camping, picking berries, killing grouse (which the Indians referred to as their "chickens"), killing deer or elk and drying the meat and berries for winter food. A lot of different tribes gathered there to trade their goods, play games, gamble and have a very good time. The Indians looked forward to going to the huckleberry patch as it was their big yearly event. One time when I was about seven years old, my grandmother stood on a rock point over looking the berry patches and she pointed to some very large trees and said, "Close to those trees, there are many things buried. There are stone bowls, pestles, tools, arrowheads, weapons and many trinkets." I asked her how long these things had been buried and she said our Indian people always kept those things here. I asked her if we could dig some of the things up and look at them. She said the things buried there were to use if we needed them but they were always to be buried back in their original place because someone else may want to use them. Nothing is ever to be taken away. You are always to add something of your own when you rebury the items. They are to stay in this ground forever. A few years ago, a man from Central Point, Oregon by the name of Moore who has a small private museum, found one of these caches, close to this area and he removed over 1200 pieces of beautiful Indian stone work which may be seen in his collection today. The Indians would watch a white butterfly flying in the big, tall trees. When the white butterfly was flying around the tree about half way up,

they would start getting ready for the berry patch. As time went on, the butterfly would fly higher, near the tops of the trees and this meant the huckleberries were ripe.

In the areas of these Indian people there are many gathering places, some we still use today. Camas Valley was a great place for many tribes to gather and camp, digging the camas roots for a source of food. Today, a person can walk along Camas Creek and find arrowheads from several different tribes, all in this one area.

We still use one of the old Indian cemeteries. It has always remained in our family. It is located on the land of my great grandmother, Susan Nonta (Longtain) Thomason, close to the place of her birth. In Jan., 1979 we had a re-burial of two Indian remains which were accidentally dug up by construction. The ceremony and re-burial took place in this very old family cemetery. While digging graves, we have found stone chippings and ashes five foot deep. On Joe Hall Creek, close to the cemetery, one day my great uncle, Louis Thomason, showed my cousin and I where several old, unmarked Indian graves are. He said, "This is the resting place of some of your ancestors." One is under a tree, beside the creek, where Louis' mother, Susan, showed her children where an old chief is buried with his favorite possession, his tomahawk. The old chief was a relative of Susan. One day, I took an archeologist to the place of Susan's birth. He determined it to be a place of prehistoric existence. His name is Dr. Joseph Hopkins and he is a professor at Southern Oregon College, Ashland, Ore.

I have been shown how to make the original Indian artifacts by my people such as arrowheads, knives, spears of stone and bone, bowls, pestles, bows, arrows, fish and eel traps, deer traps and many other things. In my life I have used many of these. My grandmother carved pipes and animal figures from a white pipe stone which always seemed to be a very prized stone. She gave several pieces of her carvings away. Her son, my uncle Wesley Larson carved some pipes which he gave away. In my collection, I have one horse that my grandmother carved. I asked her many times if she would show me where this white stone came from. She said it was located high up in the mountains and that the old Indians used this stone for their pipes. She said, "Someday, I will tell you where to find it." When I was about 30 years old, she told me where to go and stand high in the mountains on a bed rock knoll, then look all around from this point and it is not very far. This is all the directions that she would give me. She said that if I wanted to find it, I would have to work for it, then I would appreciate it more. She said, "It is buried. When you find it, dig out only what you need, then rebury it and it will always be there. From this point, with some help, I did locate the white stone about a mile away. Not very far, can mean up to two or three miles away, so I was very lucky to find the stone. I have carved several pipes and figures from this stone. One year, I won a blue ribbon at the Douglas County Fair for my Indian carvings.

I have a mall museum in a log school house which was build in 1906 that I have restored and is on my property at Drew, Oregon. Each school year, I have students from as far as 60 miles away come to my museum. I give them demonstrations on arrowhead, knife and tool making. I also do this for the Cub and Boy Scouts and the Jaycees. Our Indian culture is now referred to as Folk Culture. I have had some interviews from news papers and the Douglas County Museum on our Indian culture and folk art. To me, this is my way of life, this is how I have lived. I live in a log house my mother and father built on their homestead. This land was once the home of great grandmother, Susans people.

Our family have always been referred to as Indians. Sometimes, this was very hard, especially in school when I was young. In grade school when you were called an Indian, everyone else always thought that meant you were some kind of a primitive person. I have lived with this all of my life. On June 1, 1979, a neighbor of mine that I have known all of my life, told me that I shouldn't wear a wrist watch because if it weren't for the white man, I wouldn't have a watch. I have always heard things like this. I am not a full blood Indian but if I were, I don't believe my life would be any different.

I believe our people in the Cow Creek Band of the Umpqua Indians have a legitimate claim here. Our great ancestors have always been the Indians of this area, no matter what they have been called, no matter where they have gone, this area has always been their home. There are many documents telling of our people living here in the mountains and I will say that, so far, there is no one anywhere that has come within 1,000 years of accurately dating the existence of our people here.

Several of our people have gone to school under the B.I.A. I went to Oakland Jr. College, Oakland Calif. under the B.I.A. as an Umpqua Indian and then was

terminated without a hearing or notification. I don't believe this termination was fair or just to any kind of people. After so many years of our people trying to get someone to listen to them, I have hope that through these Indian hearings, the U.S. Government will listen to the facts and make a fair and just settlement for our people. Our people have worked toward this since 1853. So many times, have been told that this or that doesn't apply to our people, or we don't qualify for some reason. This has been a constant uphill struggle for several life times of our people here in the United States of America, to be dealt with fair and just. There always seems to be several billion U.S. Dollars given away to foreign lands. Now, let us settle with our own people. Let us give the children a chance for a proper education. There is money available for education but it is very hard or impossible to get because we are not reservation Indians. This is the same old story our people have been told so many times in the past. Or, we are told that we can't qualify because we are terminated Indians.

My great uncle, Louis Thomason who was born in 1882, told me, when I was about 10 years old that some day in June the leaders of our great government of the United States would come to us and settle with us for what had been taken away and for the death and suffering that our people had gone through. He said our people at one time were very rich in land, water, fish, deer and berries but most of all rich in their way of life and had a whole world full of peace and contentment. He died in 1949 without seeing that day in June but still believing in the Great Government. I could go on for several pages but I realize other people want to speak and many things have to be heard.

I thank you for hearing my testimony.

My name is John Young. I wish to thank all of you for allowing the tribal members of the Cow Creek Umpqua Indians to appear here today. I wish also to thank all the people who put forth their efforts in our behalf.

In the opening of my statement, I would like to clarify the name "Cow Creek". This tribal name was given to the Indians with the signing of the treaty of 1852. Joel Palmer, who negotiated the treaty referred to the people as such because the treaty was signed on Cow Creek. Prior to that time all the people and their land, too, was known as Mi-wa-leta. There were several different bands who made up the Mi-wa-letas. Upon becoming chief of all the bands who made up the Mi-wa-leta tribe, the chief gave up his own name and himself, became known as Mi-wa-leta. Many generations of these families in the tribe recognized the land along the Umpqua as their home ground. They were referred to, in general as Umpquas, rather than by a band name.

My tribal descendency comes through both of my great grandparents, Jean Baptiste (Tom) and Clementine Petit Rondeau. Great Grandfather Rondeau was born in either 1839, 1840 or 1842. He died when I was 10 years old, in 1936. He said he was tired and his usefulness was over, so he just died.

My memory of him is of him playing with us kids and telling us stories. Some of these stories were of long ago and some were of his own life. This is the way our people passed on the history from generation to generation. These stories were always told outside, generally in the yard under a big oak tree in the shade or around a campfire at the same spot. He would sit in his rocking chair with his blankets around him and we would all sit around him, listening. Sometimes there would be only 3 or 4 of us and sometimes as many as 15 or 20. Grandpa Rondeau loved the telling of these stories and told them over and over. He told us all to remember them well as they were the history of our people.

One of the stories of our tribe here went back to the time of an Indian war with the coastal tribes and how they started the "Great Fire". They sent in burning kites made of dried fish skins and started the fire. It was after this time when they became known as Mi-wa-leta, meaning small-long time ago-people. I have used the terms Indian and tribe here but I never did hear Grandpa Rondeau refer to them as anything but "the people" or "our people". He did term the French as French and the white settlers as "white". He said there were lots of good white people and some bad but when the good got with the bad, they were all bad.

He told of the gathering of the people for the signing of the treaty. He said there was much happiness and celebrating. The white man army was going to take care of them!!! There would be no more killing of our people!!! They could live in peace forever, they would have their own lands, where the white man couldn't bother them anymore!!!

He told of the army helping to build a fence around a small piece of land, of helping them build houses on it, plowing some of it, of helping them seed it. He said they also gave them some clothes and blankets and a few cattle. Later, the army came back and took everything they had given the Indians. The Indians who protested were shot. He told of running for the mountains with the army chasing them. The bunch he was with went into the mountains of Upper Cow Creek. He said the people were starving, they had fled with nothing and all they had was what they could gather off the land and it was winter time. He said they stayed in the mountains for a long time, he did not know how long. When they finally did come out of the mountains, Grandpa Rondeau went to work for a white settler. This man wanted to help them. He went to where the Indians were camped and told the people that if they went to the reservation, they would be given a place to live and food and blankets. He said his people no longer trusted the white man's word so they sent him as a runner to see what this reservation was like. Shortly before this his younger brother, Tom, had been shot and killed by two white hunters as he was rounding up the settlers cattle. This was a part of his regular chores but they saw him and just shot him. For this reason, he only traveled at night and it took him a long time to get there. He feared being shot as his brother had been. The family was much saddened by the senseless killing of this young boy and after that time, they started to call Grandpa Rondeau, "Tom", so finally he just took the name, "Tom".

He said it was in the dark hour of the morning when he got to the first village on the reservation so he waited until daylight to show himself. The way he told it, the houses were of "sticks", some with rock walls and stick roofs. This sounded funny to us kids for it reminded us of the story of "The Three Little Pigs." He told of seeing the people sick and dying. They had no food, clothes or blankets. They were ashamed that they had nothing to offer a traveler. He needed moccasins but they couldn't give him any, they were barefooted, too. He said he went to other villages and the conditions were the same. He said he looked into one of the houses and there was a dead woman in it with a baby trying to nurse her. He never was able to locate any of the people who spoke his own language. The people was able to locate any of the people who spoke his own language. The people were all mixed up together. He was able to talk to some of the people in jargon. Jargon was the common language used there as all the tribes were put in together. It is evident that during this time, there was a tremendous loss of not only the tribal languages but also their culture and traditions. When he was to return home, he left at night and he said it didn't take him very long to get home for he ran all the way. When he got home, he told his people the terrible things that he had seen. He told them he would never go to a land that had nothing but sticks and rocks, that if he was to starve, he would do it on his own land. No one, then went to the Grande Ronde reservation.

Some of the Indians were able to work for the white settlers. In 1868, he married my great grandmother, Clementine Petit but it became harder and harder for the Indians to live as the land filled up with whites, so they moved further and further up the South Umpqua River, where they finally settled permanently. They and 14 of their 36 children lived and died there. Two of their children are still alive. They lived mainly off the land, farming, mining gold, making clothes out of skins. They took pack loads of shirts, pants, moccasins, also rawhide lariats, saddles and packsaddles to Salem and all up and down the Williamette Valley to sell to the whites.

It has been my experience, not only with my great grandparents but with other older tribal members that even though we should live in peace and harmony with our white neighbors as they had lived their lives, we were always to remember and pass on to our children, the old Indian stories and customs. Above all, we were taught to love and respect the land, protect the animal life and to use our natural resources with good judgment.

I thank you for giving me this opportunity to tell you a small portion of the history of our people.

My name is Louella Rondeau (O'Dell) Michaels. I am a Director on the Board of the Cow Creek Band of the Umpqua Indians.

I would like to start my testimony by stating that I have attended our Tribal Meetings for approximately 45 years. My first memories of those meeting are of going with my parents before I ever attended school. They were held at different places; the old Tiller school, the Lavadour school, at Uncle Tom Rondeaus or

at Nellie Crispen's house. In my early memories, I recall playing outside with the other younger children and the potluck picnics and dinners we all enjoyed. By the time I was 16, in 1945, I was attending the regular meetings as an adult just as my children are now doing.

I particularly remember a large meeting held at Nellie Crispens' house in the summer of 1950 because we were working on our family records and getting ready to send in our applications for enrollment with the "Confederated Bands of the Umpqua-Calappoia Indians, under the treaty of Nov. 29, 1854. My application was mailed to the B.I.A. on Sept., 7, 1950.

Another meeting that stands out in my mind was in the Spring of 1955. It was held at Sutherlin and several people were there from the B.I.A. office in Portland to help us establish our new rolls and tell us about educational opportunities. Mr. Clyde Busey was in charge of the rolls. He was very abusive and negative toward our people. At the same time, at another table, they were taking down the names of those wanting further education and finding out in what fields they were interested. They took our names and gave us applications to fill out and return. Then, we were to be contacted and an appointment would be set up with Mr. Allen who was the Training Officer. We were to give him our final decision and at that time he would know where we would be attending school. My application was approved but due to the fact that I would have to attend Cook County School of Nursing near Chicago, Ill., I declined as I felt it was just too far to have to move three small children. If I would have been able to attend a Nursing School here in Oregon, it would have been a truly great opportunity in my life. I never could understand what their point was in wanting to send me so far away, especially since I had never lived in a large city and the thought terrified me.

Another meeting that is outstanding in my memory is one held the last of July, 1957 at the Gilbeaugh place near Days Creek. This was just after we had received our rejections from the Confederated Bands of the Umpqua-Calappoia". The rejection stated that, "None of the ancestors through whom you claim eligibility can be identified as members of, or of the blood of the Confederated Bands of the Umpqua Tribe with whom the treaty of Nov. 29, 1854 was made." This meeting was for the purpose for a committee to be appointed to go in search of any records that would help to prove our ancestory. The people chosen to go were Johnny Johnson, Luretta Buschmann (our present chairmans' wife) and myself. On the 19th of August, 1957 we went to the Portland Area Office of the B.I.A. to meet with Clyde Busey. At that time, I asked to see our old tribal rolls and also the more recent ones that had been made up at Sutherlin in 1955. He said it usually took a couple of days to dig out records and for us to stay over until the next day and he would do his best to have them ready by early afternoon. We returned to see the records but for some mysterious reason, all the ones we wanted to see and copy, were not there.

At this point Mr. Busey and I got into a rather heated discussion as to whether we were even Indians or not. He said, "It makes no difference to me what the people of your tribe know to be true. You will have to prove to me who you are." I asked, "How can we do this without copies of our records and the rolls?" He said, "That is up to you people and no concern of mine." With that statement, he walked out and slammed the door. This did not surprise me as it was the usual type of treatment received from Mr. Busey.

As you can see there is no mention of the Cow Creek Band of the Umpqua Indians thus far in my testimony. That is because no one ever informed us that there was a separate treaty written for our people. It would not have been too difficult for them (the B.I.A.) to have given us this information as these families always resided right in the Cow Creek area and were known generally as "Umpquas". At times, however, we were also referred to as Calappoias or Molallas. As a result of not being properly identified, in all the years of our past efforts, we ran into one stone wall after another. We were never told that it was necessary for us to file a claim in the Court of Claims. Anyway, by the time we received our rejection notices it was far too late to have filed. No one ever cared enough to inform us of our legal rights or in any way give us a helping hand. Oh, there have been attempts made along the way but until recently, they have been fruitless because of our lack of money. We could never afford attorneys because it was always, money first and then they would see what they could do to help us. Of course, the rejections that we got were correct. We were not where we belonged, we should have been advised then to file as Cow Creeks.

Through all these years and years of trying to be heard, someone has, at last, given us this chance. In closing, I would like to express my sincere appreciation

to all who are here to listen to us today and to thank each and every one of you for giving us the chance to speak for our people back home in Oregon.

Ladies and gentlemen: My name is Amaryllis LaChance (Dumont) Freeman. After this long wait of 125 years, I am glad to appear here today with other members of our tribe. All my life I have been known as an Indian . . . sometimes at school as a "dirty half breed" or a "lousy Indian". I've been in plenty of fights at school because of this. Never because of being called an Indian, I fought only when I felt my mother was being insulted. Regardless of what names I was called, I have held my head up high. I have been proud of my heritage and glad that I was born in the land of my people along the Umpqua. I've been taught the old Indian customs that were handed down and I am, in turn, passing them on to my children.

I love and respect this land that was ours. I find it hard to believe that the so called fore fathers of this United States of America, left their own lands across the sea to escape religious oppression and poverty, then, after coming here, they perpetrated the same crimes on the Native American. He was influenced through devious means to give up his land for practically nothing. If he didn't give it up, he was forced off of it. Not only did the Indian have to give up his land but his religious beliefs, his culture and his freedom to roam wherever he wanted to go. It has been a matter of losing his entire identity.

A federal ordinance was passed in 1787 which was one of the first laws that was passed to protect the Indians and in 1847, Oregon passed an act that was to insure a "standard of fairness" when dealing with the Indians. Of course, both of these acts had been passed before the signing of our treaty in 1854. The terms of that treaty allowed the Cow Creeks $0.023¢ per acre while Donation Land Claims were being sold to the settlers for $1.25 per acre. Is this a "standard of fairness"? Not long ago it came to my attention that one of todays law makers, upon being presented information about our case said, "I am up to my neck in these old Indian treaties and cases". My answer to that is: "Maybe the Indians have had it up to their necks, too!"

I would like to give you a good example of the "good" treatment our tribe always received from representatives of the B.I.A. At a meeting in Sutherlin in 1955 Mr. Clyde Busey who was the Director of the B.I.A. Portland office was present to help all the Indians establish permanent tribal rolls and to get our back ground. There was also another man and two women taking down information. My sister, Jane LaChance Heussner and I were standing by the table where Mr. Busey was interviewing Mrs. Nellie Crispen. We were the next in line so we heard the whole conversation. Mrs. Crispen had her documents and papers spread out on the table and she was trying to explain her family line. He talked so snotty to her and pushed her papers away and told her they didn't mean anything, that he did not want to look at them. His treatment was so rude and it made her so mad that she could not finish filling out her statement. I heard her say, "Listen here, young man, I know what I know." She was just furious: She said, "All of us here know the histories of our families." She was so upset that I had to help her out to the car so she could calm down and after the recess for lunch she was able to get her papers finished. My mother, Mary Gilbeaugh LaChance received the same treatment as did my uncle, Louie Gilbeaugh. He got so smart with Uncle Louie, that I heard Uncle Louie raise his voice and swear and that was the only time in all my life that I ever did hear him cuss. Later, that day my mother did finish filling out Uncle Louies papers. You can talk to any of our people about that day. They remember it well. They were all talked to like they were a bunch of simple minded idiots.

My mother, Mary Gilbeaugh LaChance worked for many years for Judge Huron Clough and his sister, Bess, on their ranch. Their parents were Adeline Eliff Clough and Joseph Clough. The Eliffs were one of the oldest families of white settlers who lived on Upper Cow Creek and they had known Mama and her family all their lives. When I was about 6-8 years old, the Cloughs entertained as their honored guest at dinner, Sen. Wayne Morris and George Neuner, Sr. who was a member of one of the oldest pioneer families at Riddle. That day, they talked to Mama about her Indian affairs and said they would try to help her. Neuner said that he would be willing to handle the case for 5% but that he would have to have a certain amount of money guaranteed. Of course, the situation was the same. We had no money for necessities and certainly no money to put up as a guarantee.

I will always feel that this land was ours and I feel hurt inside that the old people were deprived of their familiar way of life. Our tribe continues to meet and remain strong and firm in their belief that no matter how long it takes, right will prevail. Our parents and grand parents met with each other through the years and it is my hope that our children will do the same. Also that they will respect and protect this land.

When the merits of our case are weighed, please consider the heart break, tears and disappointment that we Indians have lived with through the years. We would have pleaded our case before this governing body thirty-three years ago, in 1946, had we known that we would have been allowed to be heard.

Before I close my statement, I would like to make it clear that Mr. Leonard Allen who was the Training Officer for the B.I.A. was the one person who was always kind and courteous to all of our people and tried to do all he could to help them.

Thank you.

OUTLINE OF PRESENTATION ON BEHALF OF THE COW CREEK BAND OF UMPQUA INDIANS

Senator Mark Hatfield, Congressman Jim Weaver, Chairman John Melcher, Chairman Morris Udall and committee members: I am very grateful to be here today and to have the opportunity to testify on behalf of the Cow Creek Band of Umpqua Indians.

Identification of speaker. My name is Naomi Rainville Gould. I am an Indian whose roots are in the land of the Umpqua, an area which is now largely the Umpqua National Forest. I have personal identity as an Indian and am active in furthering the rights and opportunities of the Umpqua Indians, as well as, other Tribes and Bands in the State of Oregon. I am a member of the Upper Umpqua Inidan Council. The Upper Umpqua Indian Council is an informal, but regular, gathering of members of extended families consisting of descendants of the following people: Rainville, Rondeau, Dumont, LaChance, Parazoo and Thomason. We meet at regular intervals, generally near Canyonville for two purposes. First, the preservation of our cultural base as Indians of the Upper Umpqua. Second, to petition for redress of our grievances.

Historical basis: The ancestors of these families lived in the region of the headwaters of the Umpqua River, above and around Canyonville in an area of approximately 800 square miles. Some married French Canadian fur trappers and traveled throughout the Northwest. Others through various means settled and remained in the area. For the most part the ancestors of the Council members were not reservation Indians.

In September 1853 a treaty was negotiated with the Cow Creek Band of Umpqua Indians. The treaty conveyed the aboriginal lands which documents and the memory of our grandfathers indicate were personally recognized as the childhood homes of our various ancestors. Most of the tribal members were removed ultimately to the Grande Ronde Reservation. However, as I have indicated ancestors of most of the Council members through various means continued to reside in the area.

The jurisdictional statute which gave raise to the litigation involving the Umpquas and Molels was due in significant part to the industry of the families of the Upper Umpqua Indian Council. We have documents showing meetings of these same family members over 60 years ago to accomplish the goals which I have outlined. We have copies of seemingly a perpetual flow of letters between Council members and then Senator McNary which cumulated in the jurisdictional legislation. Council members had legal representation to secure a redress for the nonpayment of Treaty obligations to the Molels and the seizure of reservation land as early as 1921.

Ironically, when the fund was established the Bureau of Indian Affairs which had at various times carried members of the Council on its roles as Umpquas and/or Calapooias and has sent members of the Council to school under Indian Training Acts, denied that we were members of the Umpqua or Calapooia Tribes.

The financial loss of that decision, together with the further governmental decision of termination were not significant compared with the emotional damage effected by this governmental rejection of our cultural background and heritage.

Our people are divided into three groups. The young, who need health and educational assistance; the middle or working group; and the elderly group. Our ancestors homesteaded and lived on the land—there is no Social Security for

surviving widows—nothing but Welfare and the State of Oregon is in a critical condition as far as public assistance is concerned. Passage of the bill would open the door for tribal members—it would enable them to have the assistance so badly needed and would give them the inheritance they so justly deserve.

Upper Umpqua Indians: Early in April of 1974 the various bands and tribes of the Umpqua area, including the Cow Creek Band, organized under the title of CITOWO (Confederated Indian Tribes of Western Oregon). They have assisted with the Siletz Restoration Act, the Indian Economic Development Program of Coos, Curry and Douglas Counties, Indian Programs for Alcohol and Drug Awareness, Southwest Oregon Indian Health Proposal, Upper Umpqua Tribal Wildlife Management Plan, Upper Umpqua Indian Restoration Act and their own attempt to rectify the unconscionability of the Government's having taken our aboriginal lands.

Now, in closing, your efforts and endeavors on our behalf are greatly appreciated by all Tribal members of Western Oregon—your continued support is hereby solicited.

Chief Joseph surrendered his Nez Perces Tribe to General Howard of the United States Army in 1877. He ended his speech with the statement: "My heart is sad and sick. From where the sun now stands I will fight no more forever". My statement is different: "I will fight forever—not by acts of violence and revenge but by the spoken word and written word. I shall fight as long as I shall live to bring about restoration, Federal recognition for all Tribes of Western Oregon, and to rectify the emotional damage effected by the governmental rejection of our cultural background and heritage. Thank you.

Members of the Committee: I am Stephen Dow Beckham, an Associate Professor of History at Lewis and Clark College in Portland, Oregon. I live at 1389 SW Hood View Lane, Lake Oswego, Oregon.

I appear before you today because of my deep concern that the Cow Creek Band of Umpqua Indians has suffered nearly 130 years of injustice and, at times, unconscionable treatment by the government of the United States and by the citizens of this country. An extensive historical record, much of it official records of the government, clearly documents the history of these people.

The lands of the Cow Creeks were visited regularly by fur trappers of the Hudson's Bay Company in the 1830's and the 1840's. Several French-Canadians, some of them half Indian, served at the company's Fort Umpqua, the southernmost post of the firm in North America, and married Indian women of the Umpqua River Valley. The relations between the Indians and these fur seekers were peaceful.

In 1846 the Applegate Trail opened as a branch of the Oregon Trail. This route led directly through the lands of the Cow Creeks. In subsequent years overland travelers regularly passed across their territory. That ebb and flow of out[illegible]ders increased markedly when in 1848 the California gold rush began drawing res[illegible]nts of the Pacific Northwest. The Cow Creek lands were crossed directly by the hea[illegible]ily traveled Oregon-California Trail, a route known today as Interstate Highway Five.

In 1851 white settlers and miners poured into the land of the Cow Creeks. Herman Francis Reinhart, one of that group, later wrote:

"We found the finest cedar trees I ever saw, yellow and red, and the logs were thirty to fifty feet without a limb and could be s[p]lit with just an axe and wooden glut. You could strike in an axe and s[p]lit twelve feet as straight as a ribbon. A good many men that had taken up claims below in the valley cut cedar logs and floated them down the creek on high water to their donation claims. A single man could take up a quarter section, or 160 acres, but a married man was entitled to 320 acres. . . ."

Filing on claims under the Oregon Donation Land Act of 1850, these settlers were moving onto Indian domain confirmed to the Indians by the Organic Act creating Oregon Territory in 1848. The allurements were not only timber and splendid open meadows for farming and cattle raising on Cow Creek. In 1852-53 gold seekers rushed into the valley to divert the stream and wash out dust and nuggets. Reinhart, an experienced miner, recalled:

"Right in the main Cow Creek, in the rock, on ripples, we found pot holes in the bed rock that would hold from one to four pans of sand which contained fine light gold, from twenty to a hundred dollars to the pan, but hard to save, for the sand was nearly as heavy as the gold. . . ."

The Cow Creek Indians, speakers of one of five Athabaskan language dialects in southwestern Oregon, found their lands filled with gold miners and settlers. These newcomers split rails and fenced the fields. They prohibited the Indians from burning the mountains and valley bottoms because the fires would destroy their fences. The Cow Creeks had long depended upon the burning to replenish their stocks of seeds and blackberries. The settlers' hogs ate up the acorns and rooted out the camas bulbs—staples in the Indians' diet. The mining debris muddied the streams and disrupted the salmon runs. The settlers, using guns, killed off the deer and elk. The whites also brought in new diseases and in 1852–53 an epidemic swept through the valley. William Riddle, who had arrived in October, 1851, wrote about the Indians and said: "They lost all hope, in fact they were dying so fast that they were unable to bury their dead, but placed them upon drift wood and burned them. After the death of the chief, the Indians who were not affected with the fever scattered into the mountains, leaving some of the sick who were unable to follow to shift for themselves. More than half of Mi-wa-leta's band died. . . ."

One other omnipresent reality was the attitude of the pioneer generation of whites toward the Indians in this region. William Riddle summed it up succinctly when he said:

"There were many things happening to irritate the Indians and to threaten the peace. There was a class of white men in the country who acted upon the principal that the Indian had no rights that a white man should respect. In the fall of 1852 a young man, a mere boy, wantonly stabbed an Indian boy, who lingered a few weeks and died."

The years 1853–56 were ones of warfare between whites and Indians throughout southwestern Oregon. During this period a company of fourteen white men, part of a group of "Exterminators" killing Indians in the region, came to the Cow Creek Valley from the mines near the Rogue River to the south. William Riddle told what occurred:

"The day following their arrival a part of their company went up Cow Creek on the south bank of the stream about four miles from our house. They found a small camp of Indians—one very old rheumatic Indian, a brother of the old chief, Mi-wa-leta, one squaw, and one little girl about three years old. The old Indian and the squaw were shot down . . . The little girl papoose was brought down alive, of which my mother immediately took charge. The men had found the child's beaded buckskin suit that they insisted on keeping, but were prevailed upon to give it up."

Riddle went with the Cow Creeks to this camp on the following day. He wrote:

"On arriving at the destroyed Indian camp a gruesome sight presented itself. The dead squaw had been thrown upon a drift heap of logs and was half burned up. The old Indian had made his way into the river before they had finished him and he lay partly out of the water on some rocks. I was at this time thirteen years old and looked upon these Indians as our friends."

These events—murders, the gold rush, and the settling of whites on Indian lands without prior cession—led in September, 1853, to the negotiation of the Cow Creek treaty. The survivors of the Cow Creek band in this agreement, the second ratified treaty in the entire Pacific Northwest, ceded their lands for $12,000 and a small reservation. They ceded to the United States over 800 square miles for 2½ cents per acre—at the very time that the government land office had, since 1850, disposed of lands in Oregon at a minimum price of $1.25 per acre.

The Cow Creeks moved to their small reservation within their aboriginal lands following the ratification of their treaty on April 12, 1854. After the outbreak of hostilities sparked by the miners of the Rogue River Valley massacring Indians on the Table Rock Reservation to the south on October 8, 1855, many of the Cow Creeks fled into the foothills of the Cascades and the Umpqua Mountains. Others who remained on the reservation began their "trail of tears" in the freezing cold of early 1856. The survivors held by the soldiers were marched north across the snow-covered trails to the Grand Ronde Reservation, two hundred miles distant on the South Yamhill River.

Many times the Cow Creeks have sought an opportunity to have their day in court to argue for a conscionable settlement for their aboriginal lands. The parents and grandparents of those who are before you today labored year after year for that opportunity. Entirely at their own expense and without any legal assistance from the Bureau of Indian Affairs, these people five times got bills introduced into Congress. When their bill of 1932 was approved by both the House and the Senate it was vetoed by President Hoover on the grounds that the country could not afford such litigation in the midst of a depression.

At times the feelings of the Cow Creeks have been depressed, too. Long have they labored to have an opportunity to tell the court how their lands were taken from them. As a person very familiar with the course of American Indian history, I strongly feel that this case is one demanding action. I urge you to approve this proposed legislation and permit these people to make their case.

VERNER, LIIPFERT, BERNHARD AND MCPHERSON,
Washington, D.C., August 23, 1979.

Re S. 668—Land claim of the Cow Creek Band of the Umpqua Tribe of Indians.
Attention: Ms. Susan Youngman Long.

Hon. MARK HATFIELD,
U.S. Senate,
Washington, D.C.

DEAR SENATOR HATFIELD: This letter concerns S. 668, which would give the Court of Claims jurisdiction to consider land claims of the Cow Creek Band of the Umpqua Indians. The undersigned is one of counsel to the Cow Creek Band, although I have not previously appeared of record on the Band's behalf.

In the course of developing the facts underlying the Cow Creek claim, your staff and I learned that the Cow Creek claim was mentioned—and ostensibly decided—in the 1946 opinion rendered in the case of *Rogue River Tribe of Indians* v. *United States*, 64 F. Supp. 339 (Ct Cl. 1946); 89 F. Supp. 798 (Ct Cl. 1950) (second decision).

After discussing the *Rogue River* reference to the Cow Creek Claim with Ms. Susan Youngman Long, of your staff, we have prepared this letter in response to that opinion.

I. SUMMARY OF RESERACH

Based on my research, outlined below, it is clear that the Cow Creek Band did not participate in the *Rogue River* litigation and that the Band was improperly named as a party. Moreover, the *Rogue River* decision reached erroneous legal conclusions which should be specifically rejected by S. 668 so that the Court of Claims can conduct a *de novo* consideration of the issues purportedly resolved in the prior litigation. If the Court gives full consideration to the Cow Creek claim, then due process will be afforded these Indians, even if there is no ultimate recovery. But until such consideration is given this claim, the Cow Creeks are being denied due process.

II. THE COW CREEK BAND DID NOT APPEAR IN THE ROGUE RIVER CASE

We previously provided your staff with a summary of jurisdictional bills introduced in the 1920's and early 1930's, any one of which would have allowed the Cow Creek Band to litigate its land claim. As you know, none of those bills became law.

What we did not discover in our research—and what the Cow Creek Band never knew—is that the legislation which established Court of Claims jurisdiction for the *Rogue River* cases included the Cow Creek claim among those eligible for consideration. That bill—the Act of August 26, 1935, 49 Stat. 801—was never made to our clients and they did not retain counsel to file their claim. Yet, a claim was filed in their tribal name.

All *Rogue River* plaintiffs were represented by two Oregon attorneys noted for Indian claims representation and a Washington, D.C., law firm also experienced in Indian litigation. Those attorneys filed Petitions naming 17 Indian tribes as plaintiffs. Among them was the "Cow Creek Band of Umpqua Indians." Of the 17 claims, only a couple were successful, and the claim filed in the name of the Cow Creek Band was dismissed. For the reasons outlined below, we feel that this should not bar our clients from presenting their claim for a fair and full hearing.

Our research into the *Rogue River* case was based on two premises: (1) to make certain that the claim covered by the S. 668 had not already been litigated and (2) to determine whether there was a *correct* dismissal of the Cow Creek claim. As will be discussed, our research confirms that the Cow Creek claim was not adjudicated and that the Band was not a party in *Rogue River*. Specifically, the following paragraphs report our findings.

1. Court of Claims Research

We reviewed the original Court of Claims files in *Rogue River* and learned that the "Cow Creek Band of Umpqua Indians" was a *named* plaintiff. The petition

was filed in their behalf by several attorneys: the now-defunct Washington, D.C. law firm of Sanders, Gravelle, Whitlock & Howrey; a Salem, Oregon, attorney named E. L. Crawford (who is retired); and, a North Bend, Oregon, attorney named John G. Mullen (who is deceased). No individual Cow Creeks were named or in any way identified in the Court files.

In addition, there is no attorney-client contract on file with the Court of Claims for the Cow Creek Band. [As is discussed below, no such contract is filed with the National Archives or Department of the Interior, and we conclude that it does not exist.]

The Court file reveals one other interesting fact: *there was virtually no prosecution of the Cow Creek Claim.* Without disparaging any counsel of record, it appears that the primary focus was directed toward the claims which ultimately were successful.

2. Client contact

We followed up our court file research by contacting various members and officials of the Cow Creek Band; this was done by the undersigned and a historical/anthropological expert retained for assistance in preparing the Cow Creek claim, Dr. Stephen Dow Beckham. Dr. Beckham is a Professor at Lewis & Clark College, Portland, Oregon, and has published many books and articles on the Indians of Oregon, and he testified at the June 14 hearings considering this legislation. Dr. Beckham and I sought to ascertain whether any member of the Cow Creek Band had knowledge of (1) the earlier litigation or (2) who retained counsel in the Band's name. As Dr. Beckham will confirm in a letter being sent from Oregon concurrently with this one, we found no Cow Creek who had any such knowledge.

3. Department of Interior Attorney Inquiry

An important part of an Indian land claim matter is the retainer contract between an attorney and the Tribe which desires to retain him. Such contracts must be submitted to the Department of the Interior for approval by the Secretary. In this regard, the undersigned requested that the Office of the Solicitor furnish us with copies or details of every attorney contract which the Cow Creek Band of the Umpqua Indians executed in conjunction with the *Rogue River* litigation. On July 31, 1979, we were advised that no such contract can be located and there is no record that such a contract was ever executed.

4. Conversations with Mr. Crawford

The Sanders-Gravelle law firm is defunct and attorney Mullen is deceased. Thus, the only living attorney known to us who participated in the *Rogue River* case is Mr. Crawford and we decided to contact him as part of the research for this letter.

On July 26, 1979, the undersigned called Mr. Crawford to ascertain whether he *in fact* was retained by the Cow Creek Band for the *Rogue River* litigation.

Mr. Crawford has no present recollection of *ever* having represented the Cow Creek Band. However, he declared that he was the attorney who negotiated and signed the attorney contracts for the *Rogue River* case and claimed exclusive contact among the various attorneys with the Indian Tribes in signing the attorney contracts. The only trips Mr. Crawford recalls making to sign attorney contracts were to the Siletz Reservation, and he has visited neither the Grand Ronde Reservation nor the Canyonville Area (where the Cow Creek Band has always resided). Finally, Mr. Crawford said he has *never* negotiated with, or represented, the Cow Creek Band of Umpqua Indians.

As the *Rogue River* case indicates, and as Dr. Beckham confirms in his letter, the Cow Creek Band signed a treaty in 1853 which called for the creation of a reservation; however, in lieu of creating a reservation for the Band, the Government decided to forceably remove all Cow Creeks to the Grand Ronde Reservation. This policy resulted in the relocation of only a few Cow Creeks; most of the Band remained on their aboriginal lands.

In a subsequent Indian relocation, a number of Indians were moved from the Grande Ronde Reservation to the Siletz Reservation, and it is almost certain that the Cow Creeks were among these Indians. We are unable to now verify this fact, but Dr. Beckham confirms this possibility and the Court of Claims specifically found in *Rogue River* that Cow Creeks were removed to the Siletz Reservation. Thus, we assume that some Indians with Cow Creek blood probably lived at Siletz in the 1930's and 1940's, but they were not part of the Cow Creek Band and were not authorized to represent the Band in court.

6. National Archives Research

We investigated the existence of a Cow Creek attorney contract at National Archives. No contract was discovered.

III. CONCLUSIONS FROM FACTUAL RESEARCH

It is clear that the Cow Creek Band was not a party to the *Rogue River* litigation. Rather, it is possible that Mr. Crawford was approached by an Indian of Cow Creek ancestry during one of his trips to the Siletz Reservation, and he added the Cow Creek plaintiff without knowing that his client was not a member of the Band as it then existed. In light of the facts that he had a "Cow Creek" and the jurisdictional act included claims under the Cow Creek Treaty, Mr. Crawford probably listed the "Cow Creek Band" as a plaintiff on the assumption that it no longer existed other than in the person of his client. The critical factor is that the Band did not retain him, although it was then a functioning entity at Canyonville—a fact demonstrated by its ability to lobby the introduction of several jurisdictional acts in the 1920's and 1930's. And if the Band was not a party to the *Rogue River* case, that decision should not now stand as a bar to the Band's going to court.

IV. THE COURT OF CLAIMS ERRED AS A MATTER OF LAW

The Court of Claims found that the Cow Creek were not entitled to recover on the basis of any lands wrongfully taken from them since their treaty did not give them "a grant or cession of land." The Court relied on *Sioux Tribe* v. *United States*, 316 U.S. 317 (1942).

Even if the Cow Creek Band *had* been a party to the *Rogue River* case, this ruling should not be permitted to stand because the Court of Claims was wrong. The Cow Creek Treaty specifically declared that a temproary reservation would be established with a permanent reservation to follow. And it is well settled that the Government's failure to provide a permanent reservation in this case is a taking of property in violation of the Fifth Amendment to the United States Constitution. This principle is found in many cases including *Tlingit and Haida Indians of Alaska* v. *United States*, 389 F. 2d 778, 182 Ct. Cl. 130 (1968); *Confederated Salish and Kootenai Tribes of Flathead Reservation, Montana* v. *United States*, 401 F. 2d 785, 185 Ct. Cl. 421 (1978), *cert. denied*, 393 U.S. 1055 (1969); and *The Three Affiliated Tribes of* the *Fort Berthold Reservation* v. *United States*, 390 F. 2d 686 (Ct. Cl. 1968). Moreover, the *Rogue River* Court's citation of *Sioux Nation* completely ignores the differences between temporary reserves and permanent reservations—differences which we can detail for you but which more properly should be presented to the Court of Claims.[1] We are only trying to show that issues exist which have never been adequately presented.

The *Rogue River* decision also erred in analyzing the money payments under the Cow Creek Treaty. The Court said that money paid out may not have been just compensation, but that any additional amounts due for land payments were more than offset by other funds paid to the Cow Creeks. *See*, Second *Rogue River* opinion at 89 F. Supp. 808. This statement is not supported by the Court files and appears to be a mere assumption which is controverted by Dr. Beckham's testimony in the hearings and the record before the Congress. Certainly it should be subject to a full court review.

V. SUMMATION

In conclusion we submit that the Cow Creek Band should have the opportunity to fully present its claims to the Court of Claims. In this regard, we propose that the legislation be enacted with a provision that the Band be allowed to adjudicate its claims notwithstanding any findings in the *Rogue River* litigation, with an affirmative stipulation that the *Rogue River* decisions do not constitute either *res judicata* or *stare decisis* for Cow Creek claims.

If you or your staff have any further questions or comments, please do not hesitate to contact either Dr. Beckham or the undersigned. We appreciate your kind consideration.

Sincerely yours,

DENNIS J. WHITTLESEY.

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[1] More specifically, the *Sioux Nation* case dealt with parcels of land set aside from the public domain to *expand* treaty reservations. The court found that lands which the President voluntarily donates to the use of Indians can be unilaterally withdrawn under specific statutes. As for the Cow Creek, lands were pledged to them in return for their voluntarily vacating aboriginal properties. Thus, we are not dealing with a President's unilateral and voluntary setting aside of lands for Indian use, as in *Sioux Nation*, but rather lands which were *pledged* to those Indians. This is a substantial distinction.

1389 SW HOOD VIEW LANE,
Lake Oswego, Oreg., August 1, 1979.

SENATE SELECT COMMITTEE ON INDIAN AFFAIRS,
U.S. Senate,
Washington, D.C.

DEAR MEMBERS: I write to you regarding Senate Bill S. 668, 96th Congress, 1st Session, relating to the Cow Creek Band of the Umpqua Tribe of Indians of Oregon. I was in Washington, D.C., on June 14, 1979, with members of the Cow Creek Tribal Council to testify before you about this proposed legislation. This letter is to add some further information to the hearing record.

First, many of the Cow Creek Indians were not removed to the Siletz or Grand Ronde Reservations in 1856 and 1857. The treaty with the Cow Creek Band of 1853, ratified on April 12, 1854, stated: "It being understood that this last-described tract of land shall be deemed and considered an Indian reserve until a suitable selection shall be made by the direction of the President of the United States for their permanent residence * * *."

The Executive Order of President James Buchanan of June 30, 1857, and the memorandum of Secretary of the Interior J. Thompson of that same date creating the Grand Ronde Reservation do not specify that this reservation was for the Cow Creeks. Rather, that tract was "established as an Indian reservation for the colonization of Indian tribes in Oregon, and particularly for the Willamette tribes, parties to treaty of January, 1855." (Kappler, Vol. 1, 1904, pp. 886-87).

The Executive Order of President Andrew Johnson of December 21, 1865, and the memorandum of Secretary of the Interior James Harlan of December 20, 1855, creating the Siletz or Coast Reservation likewise do not specify that the reservation was that called for under the ratified treaty of April 12, 1854.

Some refugee Cow Creeks were, indeed, taken to the Siletz and the Grand Ronde reservations. On February 11, 1856, Joel Palmer, Oregon Superintendent of Indian Affairs, wrote to Commissioner G. W. Manypenny that he had requested soldiers from Fort Vancouver to journey to the Umpqua to compel the Indians of that region to remove. Although some were removed by the soldiers, others were not. Palmer noted that many of the Indians had escaped from the agent and the soldiers. He added to Manypenny: "Ten persons who had fled from his [Agent R. B. Metcalfe's] party could not be induced to proceed."

The Cow Creeks who seek the passage of this legislation are those who have remained in the Umpqua Valley and have, for more than fifty years, sought an opportunity to have their day in court for a conscionable settlement for their lands ceded under their ratified treaty. That many families of Cow Creeks fled to the ravines and back country is testified to by the letter of Indian Agent Theophilus R. Magruder of November 7, 1885, to Superintendent Palmer: "The Cow Creek Band of the Umpqua Indians have proved to be hostile and fled to the mountains. There will be a company of volunteers start in pursuit of them in the morning."

The dozens of families of Cow Creeks who are represented by the present tribal council are descended from a variety of ancestors who were among those Indians who remained in their aborginal area. None of these families or individuals was party to any agreement with the attorneys handling the land claims case of the Rogue River Indians. No one on the tribal council has knowledge of any involvement of the Cow Creeks in that case. To the best of my knowledge no record exists in the files of the Rogue River case—referred to by the BIA at the time of the hearing—of a contract between the Cow Creeks and the law firm handling that case.

The Cow Creeks have not received the reservation which was to be selected for them by the President under their ratified treaty. They were paid what I deem an unconscionable sum for their aborginal lands. They seek an opportunity to present to the U.S. Court of Claims their case. I urge you to permit them to do so.

Sincerely,

STEPHEN DOW BECKHAM,
Associate Professor of History,
Lewis and Clark College.

Senator MELCHER. Mr. Thomas, are you satisfied that a proper roll can be obtained for the Cow Creek Band?

Mr. THOMAS. Yes, Mr. Chairman. I am certain it can.

We have consulted extensively with Professor Beckham on that, and, as I said, the material on my right here contains original documents. We have made a conscientious effort to trace all the present claimants that we can currently identify from the people here today and their relatives, back to the people who were present at the signing of the treaty. Professor Beckham has looked into this extensively, and we have documented it, which we will continue to do.

We are able, in the process, to draw up a current, valid, existing roll of the present existing members.

Senator MELCHER. Do the six families that have been identified in previous testimony form the basis of that roll?

Mr. THOMAS. Yes. These are the original families. Of course, they have branched out into many individuals at this time, but these are the original families.

Senator MELCHER. Mr. Thomas, have you researched the act of 1932 that was vetoed by President Hoover?

Mr. THOMAS. We have. That is what I mentioned was dealt with in this memorandum of the legislative history.

Senator MELCHER. Was the vetoed bill a fair settlement, in your judgment?

Mr. THOMAS. A fair settlement?

Senator MELCHER. Yes.

Mr. THOMAS. Well, the bill itself did not deal with all the things that are dealt with in our bill.

The Indian Claims Commission Act extended, as I read that act, the possible remedies available to Indian claimants. We have tried to make the remedies that we request coextensive of what could have been obtained under the Indian Claims Commission Act, so I feel that, basically, it is more extensive. It includes fewer people, but it is more extensive in the potential remedies available.

However, we are not seeking anything that would not have been available to them under the Indian Claims Commission Act, had it been filed at that time.

Senator MELCHER. Has the question of offsets been addressed in your brief?

Mr. THOMAS. No. I did not know until Mr. Gerard spoke today that this was going to be a question.

It was our intention, in drafting that section of the act, to make it basically the same as would have been available to either side under the Indian Claims Commission Act. If our wording is different, it is simply a different method of drafting, but our intent was to make it identical.

Senator MELCHER. I will ask this question for the record; I think the answer is probably obvious.

You would be prepared, on behalf of the band, to address in an equitable manner the question of offsets?

Mr. THOMAS. Yes. We considered this specifically in drafting the legislation. It appears in the other cases, and I felt we had to address it here.

Senator MELCHER. The usual procedure of the Commission is to obligate the claimant—the tribe, or, in this case, the band—to pay for the attorney fees out of the settlement, if it is awarded.

The basis of the bill is that the band was not properly notified of their right for a claim, and therefore it would seem to me that the settlement, if the court finds for the band, is a little bit different than if the band had made a claim during the period allowed by the statute.

I am inquiring now whether section 3 of the bill has been drafted with that in mind—the failure of the Government to provide proper notice to the band should be a basis for a different treatment of the attorney fees.

Mr. THOMAS. Once again, our intent in drafting this was to make the remedy coextensive with what they would have had. We set it out separately simply because, in our analysis of it, it was required, and I would say that there are provisions.

We reviewed this with the Bureau before it was ever submitted. We talked with many members there. And it was our intention, in drafting it, to make the remedy coextensive. We are not after something in addition to what could have been attained then. We ask for a waiver of the statute of limitations to permit this band of Indians to obtain what they could have obtained had they known about the Indian Claims Commission Act and had filed at that time. I cannot really add to that.

It was our intention to make the remedy, including the remedy for attorney fees and costs, the same as it would have been under the Indian Claims Commission Act.

So, if that language is felt to produce a different result, that was not our intention.

Senator MELCHER. Thank you.

Congressman Weaver?

Mr. WEAVER. Thank you, Senator Melcher.

I want to welcome you once again and thank you for coming. It is good to see you.

Naomi, it is always good to have you back here. I appreciate your coming.

Naomi, you know of no instance at all of anyone you know of ever being informed by the BIA of your rights in this claim back in the years when you could have filed?

Ms. GOULD. No member of my family or I knew or had any information to that effect. This was given according to the testimony of the task force. That was one of the questions that was asked when they went about the United States and took testimony. There was no assistance offered.

It seems as though—We were always under the impression that there would be help from the BIA at the time of termination, but through the years we have not received anything except for our people who did go and have training.

Mr. WEAVER. The BIA has not established—for the record—in any way, shape, or form that they informed you? They have no documentation of any kind that you were ever informed of your rights?

Ms. GOULD. Not that I know of.

Mr. WEAVER. Well, if they had it, they would certainly come here and tell us, would they not? Of course they would.

Ms. GOULD. I believe they would. We have no correspondence, an all of our family members have worked extensively. We are very busy;

we have diaries documenting this period of time, telling about their meetings, and there was nothing there.

Mr. WEAVER. Well, that is certainly an important part of your case, I think.

Is it true that members of the Cow Creek Band were denied permission to participate in the Umpqua claim? Could you elaborate on that? Would you like to have Mr. Thomas or anyone else go into that?

Ms. GOULD. Yes. Mr. Thomas, do you want to answer that?

Mr. THOMAS. Yes. Thank you, Congressman Weaver.

Yes, that is, in fact, true. We have included in our materials rejection slips from some who did apply and were rejected because they were not considered by the Bureau to be members of the group included within those intended to be benefitted by that act.

Mr. WEAVER. Thank you, Mr. Thomas.

Naomi, do you have anything else you would like to say, or does anyone else have any comments they would like to make?

Mr. BECKHAM. I am Stephen Beckham.

Mr. WEAVER. Mr. Beckham?

Mr. BECKHAM. I would like to say that the people of the Cow Creek Band do appear in several BIA enrollments, and they also appear regularly in the Indian Census schedules for the State of Oregon, and the identification is "Umpqua."

Mr. WEAVER. That is also an important point of identification.

Naomi, you always do a good job, and I welcome you as one of my outstanding constituents. I really appreciate your coming.

The rest of you, thank you very much. We appreciate it.

Ms. GOULD. We appreciate what you have done for us.

Senator MELCHER. Mr. Thomas, there is a difference in this legislation and that which was vetoed by President Hoover in 1932, and I think you have touched upon that.

Mr. THOMAS. Yes.

Senator MELCHER. The difference, basically, is that after the statute setting up the Indian Claims Commission was enacted, there were additional remedies available to a tribe or band. Is that true?

Mr. THOMAS. That is true.

As I mentioned, I see two differences. The prior legislation included other groups who were, in fact, covered under the Western Oregon Judgment Fund Act, the one that Congressman Weaver just mentioned, whereas ours is a narrower group which was specifically excluded from that act.

In addition, the remedies, as I read the act, provided by the Indian Claims Commission Act, are broader. We are trying to bring ourselves within those broader remedies of that act.

Senator MELCHER. What facts did the Freedom of Information Act reveal that were not available to the tribe during the 1946–51 filing date?

Mr. THOMAS. The things that Professor Beckham just touched upon, in part.

These people were unable, until they got into this and actually got into the archives in Seattle and back here—we have been back to the archives in Suitland, Md.—to get some of the identifying material that is included in here, that is included in the historical records enclosed in the red-covered books. They were not able to determine some of the payment records.

One of the claims, in part, is that payments were made to the wrong parties under the treaty. This type of material we were unable to develop. We were unable to develop the history of tracing the ancestry back. This is, in part, covered by the rolls, and, as Professor Beckham mentions, there was some confusion—and I think it is clear in examining these rolls—in the earlier days between the Cow Creeks and Umpquas.

Well, the designation of any of these people as Umpquas is the correct designation because this is the Cow Creek Band of the Umpqua Indian Tribe. However, as I said, in connection with that prior legislation, it is a narrower group. This is the type of information, including the treaty.

I realize that the treaty is in the Code—U.S.C.—and we have cited it. We have included it in our historical material. But they did not know it. As Mr. Ulam mentioned, this is an isolated area. Until recently, while obviously it was available, communication was not good. They simply did not know this information. They did the best they could. They met over a period of years, and they simply did not know where to go to get this and how to put it together.

Some of the things I mentioned, such as the census—the family information—were simply not available.

Senator MELCHER. There has been previous court action to solve some of the claims on behalf of the Umpqua Tribe, but there are other factors that distinguish the claims of the Cow Creek Band from those prior court actions.

What elements of the claim on behalf of the band would you bring before the court?

Mr. THOMAS. This is addressed in the orange brief, but I can summarize it briefly for you.

As Professor Beckham mentioned, the Oregon Admission Act incorporated the ordinance of 1787, which is included in the Indian Claims Commission Act, with a requirement of fair and honorable dealings with Indian tribes.

As Professor Beckham mentioned, the treaty price came out to approximately $2.3 cents per acre, when, at the time and prior to that time, it was being sold to settlers for $1.25 an acre at a minimum.

You will find, if you look at the statutory references in the brief and in the *Rogue River* v. *U.S.* case, that there were also some being sold for $2.50 an acre.

So, we feel that we have a basic claim that the United States did not deal in a fair and honorable manner with this band of Indians and that we have a claim on that basis.

We feel also that there is a claim on the basis of the fact that we feel we can demonstrate—and this is information we obatined through the Archives after the passage of the Freedom of Information Act—that payments, in fact, were made to the wrong parties—the last 18 payments. We would say that the first payments made under the treaty would also not be available to the United States as a credit for this reason.

As Mr. Young and Mr. Buschmann showed the committees with that map, the Cow Creeks were moved onto a temporary reserve after the signing of the treaty. During the Rogue River War, the militia came in. The Government was obliged and did build a couple of

buildings. They started some crops, planted some grain, and they started some cattle. The militia moved in, ate the cattle, and fed the grain to their horses.

So, in effect, they took back what had been given. We feel we have a claim that, in fact, in taking back what was given, they did not give at all. Therefore, the Cow Creeks would also have a claim for this.

The final matter—and all these things are addressed in the brief. The United States is obligated, under the treaty, to provide a permanent reservation. What they gave them was a temporary reserve from which they were chased by the militia. A permanent reservation was never established, and we feel, therefore, there is a claim for the failure of the United States to establish such a reservation or for taking the temporary reserve prior to the establishment of this.

Senator MELCHER. Have you established yet any amount of money to be involved here?

Mr. THOMAS. No. I do not feel this can be done at this time. Professor Beckham is working on this. We have worked on it. We have talked to various experts who, we feel, would be involved in this, but it is too early to really give any kind of a monetary figure on this.

There are various bases for the claim; they all have to be analyzed; and, in essence, what we are saying to the committees is, "Give us our day in court, and if we can prove damages, whatever they be, this is what we would ask to be permitted to do."

Senator MELCHER. And you are prepared to go to court?

Mr. THOMAS. We are most certainly prepared to go to court, yes.

We have entered into this, preparing for this hearing and for the court case eventually, if Congress so decides we will be permitted to do so, trying to make the material useful both to these committees and the Congress and the court. We have prepared all of our material on that basis.

In other words, when we come before you, we hope to be able to afford you material that would be admissible as evidence in court, and that is what we have based our testimony on here today.

Senator MELCHER. Well, I thank you very much—all of you. I think you have made a very convincing argument for the merits of the bill.

The committees will await the Department of Interior's information that they have requested be made available to the committees before we take action on the bills.

I would assume that all the availability under the Freedom of Information Act for information in the Archives has been given to you, and you need no assistance in that regard. Is that true?

Mr. THOMAS. That is true. We have had that available since we entered the case in 1977.

Senator MELCHER. All right.

Thank you again, very much. We intend to review the informaton submitted by the Department, by Mr. Gerard's testimony this morning, which should be available before the end of July. The committees then will review that information at that time and take action on the bill.

Thank you very much.

Mr. THOMAS. Thank you, Mr. Chairman.

Senator MELCHER. The committees stand adjorned.

[Whereupon, at 11:40 a.m., the hearing was adjourned.]

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